

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

75-6063

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

J.C.B. SUPER MARKETS, INC.,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA, and
UNITED STATES DEPARTMENT
OF AGRICULTURE,
Defendants-Appellees.

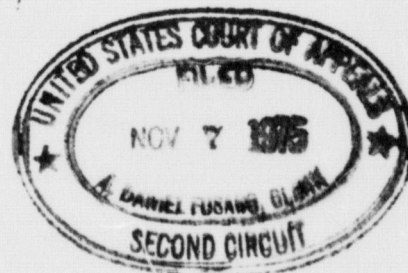
ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF
NEW YORK, CIVIL ACTION No. 1970-232.

SUPPLEMENTAL APPENDIX

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Defendants-Appellees,
502 United States Courthouse,
Buffalo, New York 14202.

THEODORE J. BURNS,
Assistant United States Attorney,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-843-0487



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Goodman, Soloman

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Letter Dated April 15, 1966.

Food Distribution Field Office
Room 402 Post Office Bldg.
121 Ellicott Street
Buffalo, New York
14203

April 15, 1966

VIA REGISTERED MAIL - RETURN RECEIPT REQUESTED

Tops Market Inc.
60 Diogenes Street
Buffalo, New York

Attention: Mr. Thomas Shanahan

Gentlemen:

On April 14, 1966 this office received a complaint that customers at the Tops Market, 409 Niagara Street, Buffalo, N.Y. were not issued credit slips relating to food stamps paid in excess of the transaction at hand.

Immediately I visited this location. At the time of visit both Mr. Sciolino and Mr. Buscag promised to rectify the situation. The entire change making system in the Stamp Program was, incidentally, reviewed with them.

The visit was happily concluded and would normally close the issue. However, today, we received an additional complaint about Union Road and Genesee Street branches of Tops Markets regarding the same situation (no credit slips issued). This would then appear to be a non-localized misunderstanding of provisions of OWS Regulations Part 1602.2(d), copy enclosed.

Your good cooperation, as usual, is requested on a chain-wide basis to correct this matter. This we are confident will be accomplished. This letter confirms Mr. Frank's conversation of this morning with your Mr. Shanahan.

Very truly yours,

John L. Cobb
Officer in Charge

Enclosure

Letter Dated September 29, 1967.

CONSUMER FOOD PROGRAMS
121 Ellicott Street
Buffalo, New York 14203

September 29, 1967

VIA CERTIFIED MAIL - RETURN REQUESTED

TOPS Super Market, Inc.
409 Niagara Street
Buffalo, New York 14201

Attention: Henry Kosek, manager

Dear Sir:

This letter will serve as a confirmation of a visit to your store by Mr. Charles Closs of this office on September 1, 1967, and an ensuing discussion with Mr. Chuck Marrazzo.

While observing food stamp transactions, it was noticed that in two transactions, ineligible items were included in the sale; namely, at one register, soap, liquid detergent and paper towels, and at another register, liquid detergent. At still another register, it was noticed that cash (\$5.02) was returned in a Food Stamp sale.

The sale of ineligible items on a Food Stamp transaction and incorrect change making procedures are in violation of Regulations Section 1600.2 (i) and 1602.2 (d). Mr. Marrazzo indicated that some new cashiers were to blame as they were perhaps not completely versed in the rules and regulations. He also indicated that he would discuss the program with the cashiers and we sincerely hope he did, since management is at all times responsible for acts of employees as you will note in the attached Guide For Retailers and Wholesalers.

We are enclosing for your consideration a copy of the regulations with appropriate sections underscored. Violations of Food Stamp regulations not only hurt the program, but also place the store in the position of possible fiscal loss and reputation damage.

Sincerely yours,

John L. Cobb, Officer in Charge
Buffalo Field Office

Letter Dated October 12, 1967.

Consumer Field Programs
Room 401 Federal Bldg.
121 Ellicott Street
Buffalo, N.Y. 14203

October 12, 1967

Top's Super Market
400 Niagara Street
Buffalo,
New York 14201

Attn: Mr. Henry Kosek

NY-1-636

Dear Mr. Kosek:

This letter will serve as a confirmation of a visit to your store on October 4, 1967 by Mr. Charles Goss of this office.

During this visit, it was noticed that several ineligible items were included in Food Stamp transactions, (Dab-o cleanser, Tide, Nitz Facial tissue, Zest soap, Scott tissues, and Glad-wrap). These sales occurred after your store had received an initial confirming letter following a similar occurrence since this store has come under your management. It would seem that more than the posting of such a letter on the bulletin board is needed. You should again review the regulations with your cashiers as management is at all times responsible for the action of employees. Including ineligible items in Food Stamp transactions is in violation of Food Stamp Regulations 1600.2 (1).

Violations of the Food Stamp Regulations hurt the Program and could bring disqualification or other actions against the grocer concerned and so, we caution you to exercise in every respect your good Program comprehension.

Sincerely yours,

John L. Cobb,
Officer-in-Charge
Buffalo, N.Y. Field Office

cc Tea Shanahan
Niagara Frontier Services, Inc.

Letter Dated March 18, 1968.

C.R.
Buffalo

MAR 18 1968

CERTIFIED MAIL - Return Receipt Requested

Mr. M. Kosek, Manager
 Tops Super Market (NY-1-636)
 484 Niagara Street
 Buffalo, New York 14201

Dear Mr. Kosek:

As you are aware, there have been a number of store visits made to your location by field personnel of the Buffalo Consumer Food Program's office. In recent months violations of regulations have been noted, called to your attention, and confirmed in writing.

The latest visit by Mr. Charles E. Gloss, of our Buffalo Field Office occurred on February 2, 1968. At this time, he observed sixteen (16) Food Stamp transactions. In two of these, ineligible items were sold for Food Stamps thus violating Part 1402.2(b) of the Federal Rules and Regulations governing the Food Stamp Program, a copy of which is attached. To be specific, sale of Scott Tissue was involved in the one instance and, RMR Detergent in the second improper transaction.

In view of the continuing violation of regulations, please consider this as an official warning letter from the U. S. Department of Agriculture and if you are again found to be in violation of the regulations you may lose your authorization to accept food coupons. You should take every precaution to insure that your employees know, understand and carefully follow the provisions of the program regulations. The improper handling of food coupons could cause the Department to refuse payment on coupons improperly used or to bring criminal prosecution for misuse of coupons.

Our representatives will visit your store again in the near future and expect to find that you are complying with the regulations in every respect. We urge that you review these regulations to assure understanding and compliance on your part as well as your employees.

cc: Thomas Shanahan
 cc: C. Marozzo, Owner
 RGS/oa cc: Subject FSP-3-153
 Readers
 RGS

Very truly yours,

[Signature]
 John F. Conroy
 Food Stamp Program Supervisor

Attachment

File *50 R -*
cc Kiley *Buffalo, NY*

Letter Dated December 2, 1968.

JRC

COBB, O-I-C - Return Receipt Requested

DEC 2 1968

Mr. Joseph Bernas, Manager
J. C. B. Super Market, Inc.
6701 T. J. Super Market
100 Niagara Street
Buffalo, New York 14201

Dear Mr. Bernas:

This letter is to confirm the visit to your store on October 23, 1968 by Charles W. Cline of our Buffalo, New York Field Office. At that time Mr. Cline discussed with John Cusack, store employee, an irregular food stamp transaction handled by him in the presence of Mr. Cline.

Specifically, Mr. Cusack sold ineligible items in exchange for food coupons, thus violating Sections 1600.2 (i) and 1602.2 (b) of the regulations governing the Food Stamp Program, a copy of which is enclosed for your use. The violative sale included the following items: dog food, boxed biscuits and watches.

This is an official warning from the U. S. Department of Agriculture that if you are again found to be in violation of the regulations you may lose your authorization to accept food coupons. Improper handling of food coupons could cause the Department to refuse payment on coupons improperly used or to bring criminal prosecutions for misuse of coupons.

Our representative will visit your store again in the near future and expect to find that you are complying with the regulations in every respect. We urge that you review these regulations regularly to assure understanding and compliance on your part as well as your employees.

Very truly yours,

John F. Connors
Supervisor, Food Stamp Program

Enclosure

cc: Cobb, O-I-C, Buffalo, N. Y.

cc. Did Go TO TOPS HQ. - Discussed w/ MR
DUSCZ 12/6

Letter Dated May 14, 1969.

MAY 16 1969

U.S. DEPARTMENT OF JUSTICE
FOOD DISTRIBUTION
FIELD OFFICE
BUFFALO, N. Y.

CLEVELAND MAIL - Return Receipt Requested

MAY 14 1969

John Cusack, Manager
JCS Super Market, Inc. 1
d/b/a Tops Super Market
400 Niagara Street 15
Buffalo, New York 14201

Dear Mr. Cusack:

This is to inform you that on the basis of information obtained in the course of investigation, there is reason to believe that you, doing business as JCS Super Market, Inc. d/b/a Tops Super Market have violated the terms and provisions of the regulations governing the Food Stamp Program 7 C.F.R. 1600, 1601 (30 P.R. 4315 as amended 30 P.R. 8105), 1602 (30 P.R. 6659 as amended 30 P.R. 13861), and 1603 (30 P.R. 13132) (hereinafter referred to as the regulations), in that the following transactions have occurred in your store:

1. On or about March 25, 1969, Betty Gafney, clerk accepted 11.70 in food coupons (3 - \$2.00 coupons) in exchange for the following which included one package of Tops' paper towels, one package of Tops' paper towels, one package of Vio detergent tablets, one cake of Dial soap, one plastic crock and one six-pack of Yacht Club Beer. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2(i) and 1601.20(i) of the regulations.
2. On or about March 26, 1969, Betty Gafney, clerk accepted one six-pack of Yacht Club Beer, one bar of Dial's detergent, one Imperial retail cropper, one cake of Dial soap, one box of Econo brand toilet tissue, one package of Stay Lene shoe laces, and one package of toilet tissue.
3. On or about March 27, 1969, John Cusack, Manager accepted 11.70 in food coupons (3 - \$2.00 coupons) in exchange for the following which included one roll of Tops' paper towels, one Imperial retail cropper, one cake of Dial's soap, one six-pack of Yacht Club Beer, one package of Vio detergent tablets, and one cake of Dial's soap. The acceptance of food coupons in exchange for the above named items was in violation of Sections 1600.2(i) and 1601.20(i) of the regulations.

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Letter Dated May 14, 1969.

- 2 -

In accordance with the provisions of 1602.6(b) of the regulations, you may submit any information, explanation or evidence concerning the above indicated violations of the regulations. A copy of the regulations is attached for your information. Your reply, which may be either oral or written, should be directed to Mr. John L. Cobb, Officer-In-Charge, U. S. Department of Agriculture, Consumer and Marketing Service, Consumer Food Programs, Federal Building - Room 411, 141 Ellicott Street, Buffalo, New York 14203, and must be received by him on or before May 27, 1969.

Your reply and the information furnished by you therein will be considered by the Consumer and Marketing Service, U. S. Department of Agriculture, before a final determination is made in this matter. In the absence of any answer by the above date, we will consider the charges admitted, and will proceed to make a final determination in this matter on the basis of information available to the Consumer and Marketing Service.

Very truly yours,

Marshall F. Spear
Acting Director, Northeast District

Attachment

cc: Halley
Lucy
Conlon
Rosca
✓ John L. Cobb - OIC - Buffalo, N.Y.
Anthony R. Scioline - President

Case Summary for Administrative Action.

CASE SUMMARY
 F
 ADMINISTRATIVE ACTION
 IN THE CASE OF

JOE SUPER MARKET, INC.
 d/b/a TOPS SUPER MARKET
 409 Niagara Street
 Buffalo, New York
 14201

I. Background

This program opened in Erie County, New York in February, 1966. The cited corporation requested authorization on March 14, 1966, and was granted number NY-1-636, the same date. No grocer meeting was attended by corporate officers, however, 'Tops', the central franchise group, did have representation at grocer meetings prior to program opening in this area.

This office received a telephoned complaint by a neighborhood grocer (Joe's Superette) on April 14, 1966 relative to JOE Super Market refusing credit slips and requiring food stamp customers to pay differences in cash. We, of course, took immediate corrective action. The then corporate officers pleaded ignorance to change-making requirements and promised to issue credit slips, etc. as required. They laid the blame on Tops 'Central Management' for insufficient orientation.

During 1967 and 1968 (in a series of store visits), four (4) such visits resulted in observations of ineligible sales. Necessary confirming letter and a District Office Warning Letter ensued. Eventually, based on continuing violations, a D.I.G. Investigation request was made, accepted, and instituted, and concluded.

In equity, it should be noted that principal corporate officers (JOE Corporation) apparently changed a number of times, so that the continuity of violations should not be so linked in reference to the present leadership. Mr. Berna became president on March 20, 1966.

There have been eleven (11) store visits to 409 Niagara, inclusive of an initial and the usual educational variety. It was the one visit of October 23, 1968 which motivated

/ more /

Case Summary for Administrative Action.

us to ask for an O.I.G. investigation. Thus other preceding complaints and observed violations concerned prior corporate incidents (other than Mr. Perna). On the twenty-third, two food stamp transactions were observed, one properly handled - the other involved a number of ineligible sold.

Redemption volume:

5/68	\$ 14,650.00	11/68	\$ 16,750.00
6/68	16,750.00	12/68	17,400.00
7/68	14,650.00	1/69	18,100.00
8/68	16,450.00	2/69	19,350.00
9/68	14,600.00	3/69	21,350.00
10/68	17,150.00	4/69	20,450.00
		Total	\$207,650.00

Grocer's general reputation.

The current president operates:

JCS Inc., Tops Market
409 Niagara Street
Buffalo, New York 14201

Transit-Lockport Markets, Inc., dba Tops
Transit Road
Lockport, New York

1980 Ridge Road, Inc., dba Tops
1980 Ridge Road
West Seneca, New York 14224

10 French Lea Inc., dba B-Kwik
10 French Lea Road
Cheektowaga, New York 14225

Except for the difficulty encountered at 409 Niagara^{he} is to the best of our knowledge, properly operating in the program. Other facets of reputation - unknown.

II. Scope of violations (supported by OIG evidence.

A. Cash for stamps - none.

- B. Ineligible items - in three of six attempts, soaps, detergents, and household supplies were sold for stamps. Two packs of beer (six pints per pack) were included in two (2) of the three successful attempts. Dollar value

/ more /

Case Summary for Administrative Action.

- 3 -

was minor in each transaction - no more than \$3.50 in any 'buy'.
 Also, see extract of transactions attached. (Page 2 of OIG Report).

- C. Back bills - none involved.
- D. Cash for change - none involved.
- E. Loose coupons - none involved.
- F. Other violative transactions - none cited.
- G. No recovery of any of the stamps utilized in the contacts was made.
- H. Retailer's Reply - An oral reply was tendered and reduced to writing and signed by Mr. Perna.

III. Action previously taken:

- A. Warning letter dated - This field office on 2/28/68 requested issuance of a D.O. Warning Letter. We have no copy of a letter confirming issuance, but it is presumed that it was so issued.
- B. Letter of charges - dated May 14, 1969.
- C. Retailer's reply - verbally given at field office 5/19/69. Attached.

IV. Recommendation

Viewing the case as involving a corporate entity (under franchise) which has reflected a constant history of observed violations, a serious complaint, and an affirmative finding of ineligible sales by O.I.C., I would recommend a six (6) months suspension based on an apparent store policy. On the other hand, Mr. Perna, the new franchised corporate president, had only one observed violation by our field office, and the O.I.C. investigation consisting of an equal mix of ineligible sales versus refusal to so participate. Thus I recommend a thirty (30) day suspension from the Program as an administration action which most nearly fits the situation.

John L. Cobb, Officer-in-Charge
 Buffalo, New York Field Office

Attachments Retailer's Reply
 Page two of OIG Report

Case Summary for Administrative Action.

<u>Date</u>	<u>Ineligibles Purchased</u>	<u>Cost</u>	<u>Attachment</u>
3/25/69	1 Pkg Tops paper napkins	.39	
	1 Pkg Tops paper towels	.34	
	1 Pkg Vim detergent tablets	.59	
	1 cake Dial soap	.23	
	1 plastic scoop	.19	
	1 <u>Six pack Pabst beer</u>	.99	
		<u>\$2.73</u>	
3/26/69	1 <u>Six pack Yacht Club beer</u>	.89	
	1 Box Dash detergent	.78	
	1 Imperial metal scraper	.39	
	1 Cake Dial Soap	.23	
	1 box Enoz moth balls	.49	
	1 Pkg Stay L... shoe laces	.29	
	1 Pkg Scott toilet tissue	.27	
		<u>\$3.34</u>	
3/27/69	1 roll Tops paper towels	.29	
	1 paring knife-Imperial	.59	
	1 cake Palmolive soap	.18	
	1 GS light bulb	.25	
	1 Box Vim detergent tablets	.59	
	1 Cadie dust cloth	.49	
		<u>\$2.39</u>	

Case Summary for Administrative Action.

May 19, 1969

SUBJECT: Letter of Charges dated May 14, 1969, addressed to John Cusack, Manager, JCB Super Market, Inc., dba Tops Super Market, 409 Niagara Street, Buffalo, New York 14201

Present at an oral interview at this office this date were Mr. Joseph Perna, President of JCB Supermarkets, Inc., and Mrs. Irma Czubaj, Head Cashier

Mr. Perna stated:

I attended the grocer orientation meeting in Niagara County and started the Food Stamp Program in our Niagara County store: (Transit-Lockport Markets, Inc., Transit Road, Lockport, N.Y.)

I have attempted to operate a clean program at the Niagara County store and since taking over JCB Supermarkets, have attempted to do same here.

We, in the Niagara Street store, have trained over 100 cashiers in the past year. I learned the program in Niagara County grocer meeting, and personally have oriented all personnel there. All personnel at Tops on Niagara have been trained and re-trained in the Food Stamp Program Regulations. I desire to operate cleanly and properly, and desire all employees to do the same.

In reference to first charge (1), Betty Cainer is a cashier of long standing and her alleged action is a complete surprise to me. If she were not in dire need of a job, I would have discharged her for violating the regulations. I have made it very plain that I will not tolerate here or any other employee violating program rules. Additionally, the head cashier is adding a statement that from her personal knowledge and observations, this cashier (Mrs. Cainer) is operating properly, and that last week, she refused an order due to the lack of proper identification of the customer.

I want to further make a general statement: The scheduling of cashiers in order to make a profit in a business, in which the return or not is very low, requires that all cashiers be scheduled as heavily as possible, even on relatively quiet days. Thus, here there are no quiet days as generally assumed.

In reference to Charge 2, statement in Item 1, plus the general statement, covers Item 2, without further comment from the grocer.

Case Summary for Administrative Action.

Page two

Reference to Charge 3: I desire to state that this man, John Cusack, is the store manager. He is a man of high integrity and very conscientious. He is not a trained cashier, but he manned the cash register during a period of heavy business, and that this transaction would reflect an inadvertent situation rather than Mr. Cusack's personal attitude or the store policy.

Additionally, I wish to add another general statement relative to Mr. Cusack and Mrs. Calner, in that these people operate without intent to gain personally by avoiding the Food Stamp regulations. They are aware that they will equally share the penalty by violating the program.

I am accompanied by Head Cashier, Mrs. Irma Czuba, so that she can determine the seriousness of this situation and she will be charged with the duty of making sure that the Food Stamp regulations are adhered to in all respects in all four (4) stores operated by me.

Until this situation is completely cleared up, I will personally give this matter the fullest attention required.

The four stores operated by me are:

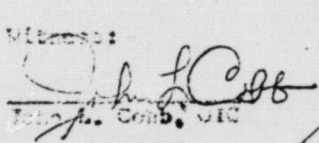
JCB Inc., dba Tops Market
409 Niagara Street
Buffalo, New York 14201

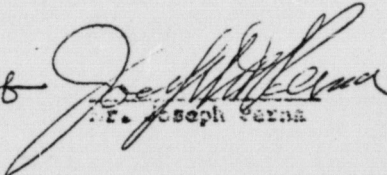
Transit-Lockport Markets, Inc., dba Tops
Transit Road
Lockport, New York

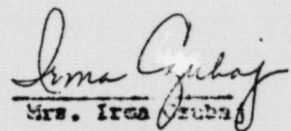
1980 Ridge Road, Inc., dba Tops
1980 Ridge Road
West Seneca, New York 14224

13 French Lea., Inc., dba B-Kwik
10 French Lea Road
Cheektowaga, New York 14225

Witness:


John A. Cobb, M.D.


J. Joseph Varma


Mrs. Irma Czuba

Letter Dated June 9, 1969.

District Recommendation - JCB Super Market, Inc.,
d/b/a Tops Super Market, Buffalo, New York (N-145-738)

JUN 9 1969

Isabelle M. Kelley, Director, Food Stamp
Division, CFP, C&MS, USDA, Washington, D. C.

Enclosed herewith is the original case summary for the subject store prepared by John L. Cobb, Officer-in-Charge of our Buffalo, New York Field Office. An additional enclosure is the retailer's oral reply to our letter of charges dated May 19, 1969.

In accordance with your memorandum regarding "Recommendations for Final Determination in OIG Investigative Cases", we recommend that this store be disqualified for a period of sixty days. This disqualification is based on the following factors:

1. Six attempts were made to purchase ineligible items of which only three proved successful, one involving the store manager. In these transactions, a total of 36 items were purchased, 19 of which consisted of ineligible items, representing approximately 53% of the total items purchased.
2. During these transactions, beer was sold by the clerk and one partial refusal was made by the manager to sell cigarettes. It appears that the program violations cannot be categorized as store policy in view of the three refusals made by the cashiers and the one partial refusal by the store manager.

However, our records indicate the following previous administrative action:

1. Confirming letter - September 29, 1967
Personal observation of two sales of ineligible items and cash as change.
2. Confirming letter - October 12, 1967
Personal observation of the sale of ineligible items.
3. Warning letter - March 18, 1968
Personal observation regarding two sales of ineligible items.

18

RECEIVED
JUN 10 1969
USDA - C&MS
FOOD DISTRIBUTION
FIELD OFFICE
BUFFALO, N.Y.

Letter Dated June 9, 1969.

- 2 -

4. Warning Letter - December 2, 1968

Personal observation regarding sale of ineligible items by store employee, John Cusack, present manager of Tops.

Since the confining letters and the warning letters were issued prior to the change of ownership, the continuity of the violations cannot be weighed in the same perspective, however we feel that since the manager had personally been involved in one violative transaction coupled with the issuance of a warning letter that a sixty day disqualification would be warranted in this case.

Philip E. Hearn
Director, Northeast District

Attachment

cc: J. L. Cobb - OIC - Buffalo, N.Y.

RCS/se

Readers: RCS/JDM

Subject: FSP 5-313

RECEIVED

JUN 10 1969

USDA - C&MS
FOOD DISTRIBUTION
FIELD OFFICE
BUFFALO, N. Y.

Letter.

SENTINEL 1961 - Return Receipt Requested

John Cusack, Manager
J&B Super Market, Inc.
D/R/A Tops Super Market
479 Niagara Street
Buffalo, New York 14201

Dear Mr. Cusack:

Administrative review and evaluation have been made of the information and evidence contained in the retailer program file, the investigative report, and your reply of May 18, 1960, to our letter of charges dated May 14, 1959. Based upon the review of the information and evidence, and pursuant to Section 1002.6(c) of the Food Stamp Program regulations, it is the determination of the Director, Food Stamp Division, Consumer and Marketing Service, U.S. Department of Agriculture:

1. That you or your employees violated the regulations governing the Food Stamp Program, 7 C.F.R. 1000, (30 F.R. 4315 as amended 30 F.R. 8155), 1001 (30 F.R. 6857 as amended 30 F.R. 13061 and 32 F.R. 8315) and 1003 (33 F.R. 13132).
2. That such irregular practices demonstrate a lack of regard for program regulations.
3. That J&B Super Market, Inc. D/R/A Tops Super Market, shall be disqualified from the privilege of participation in the Food Stamp Program.

Therefore, you are hereby notified that J&B Super Market, Inc. D/R/A Tops Super Market is disqualified from participation in the Food Stamp Program and Authorization Card NY-1-535 is revoked effective ten calendar days from your receipt of this notice. However, on or after the expiration of 60 days from the above effective date, you may apply for reinstatement, and if approved, you may be issued a new authorization card and number. Authorizations card NY-1-535 and all posters, forms, and other official material relating to the program must be surrendered on the above effective date to John E. Cobb, Officer-in-Charge, Consumer and Marketing Service, Consumer Food Program, U.S. Department of Agriculture, Federal Building, Room 401, 121 Elliott Street, Buffalo, New York 14203.

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Letter.

Refugee centers (local and wholesale) will be notified of this order the day it becomes effective. All redeemable coupons on hand at the time this order becomes effective may be redeemed if presented for the food's examination within three days after the effective date.

This determination of disqualification shall be final unless you submit a request for review in writing to the Food Stamp Review Officer, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, prior to said effective date. If a timely request for review is made, administrative action will be held in abeyance, as provided in Part 1603 (10 F.R. 13132) of the regulations, until a decision on your request has been made by the Food Stamp Review Officer. A copy of the regulations governing the Food Stamp Program is attached for your information in this regard.

This action is taken under the authority of Section 1601.6(a) of the regulations governing the Food Stamp Program.

This determination of disqualification from participation in the program shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any debts determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

Very truly yours,

Director
National District

Attachment

cc: Cobb-OIC, Buffalo, N.Y.

18

Letter Dated October 10, 1969.

NIAGARA FRONTIER SERVICES, INC.

60 DINGENS STREET • BUFFALO, NEW YORK 14206 • (716) 823-3712

October 10, 1969

Food Stamp Review Officer
Food and Nutrition Service
U. S. Department of Agriculture
Washington, D. C. 20250

Attention: Mr. Peter R. Shambora

Re: J. C. B. Super Markets, Inc.;
Authorization Card Number
NY-1-636; Disqualification
Pursuant to 7 CFR 1602.6

Gentlemen:

Pursuant to the request of J. C. B. Super Markets, Inc. in this matter to submit additional information, on behalf of said J. C. B. Super Markets, Inc., I submit the following:

Background

(a) By written notice dated May 14, 1969, the U. S. Department of Agriculture, Consumer and Marketing Service, Consumer Food Programs, by Marshall F. Spear, Acting Director, Northeast District, notified J. C. B. Super Markets, Inc. through its manager, John Cusack, of possible violations of the regulations governing the Food Stamp Program. The notice further directed J. C. B. Super Markets, Inc. to respond or appear on or before May 27, 1969, before John L. Cobb, Officer in Charge, Consumer Food Programs, Buffalo, New York.

(b) On May 19, 1969, Mr. Joseph T. Perna, the President of J. C. B. Super Markets, Inc., and Mrs. Irma Czubaj, the Head Cashier for the food store, appeared and responded to the charges by oral statements.

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(c) By letter dated July 11, 1969, the Consumer Food Programs, by Philip B. Hearn, Director, Northeast District, notified J. C. B. Super Markets, Inc., through its manager, John Cusack, of the determination by the Director, Food Stamp Division, of the disqualification from participation in the Food Stamp Program.

(d) Pursuant to the provisions of Part 1603 of the Regulations governing the Food Stamp Program, by written letter dated July 16, 1969, J. C. B. Super Markets, Inc., by Joseph T. Perna, its President, requested review, an opportunity to present additional information, and an opportunity to appear in person.

(e) Subsequently, pursuant to Part 1603.9 (b), the Food Stamp Review Officer has given continuances to submit additional information to the latest extension date of October 13, 1969.

(f) By letter dated September 23, 1969, Peter R. Shambora, Food Stamp Review Officer, Consumer and Marketing Service, has advised Thomas J. Shanahan, Attorney for J. C. B. Super Markets, Inc., of the scheduled appearance date for informal appearance as Thursday, October 16, 1969, at 10:30 A.M., at Room 410, U. S. Post Office, 121 Ellicott Street, Buffalo, New York.

Point 1.

Part 1602.6 (a) of the Food Stamp Regulations provides for disqualification from further participation in the Food Stamp Program "for a reasonable, definitely stated period of time, not to exceed

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three years..." We submit that the word, "reasonable," means reasonable as to how it affects the disqualified store. It may be that a disqualification of six months or more is reasonable and one of one week is unreasonable, based upon the condition of the disqualified store to absorb the penalty. We contend that if disqualification affects the store so as to require it to obtain working capital financing to remain in operation or so as to impose such losses on the store as to endanger its continued existence as a going business, then the penalty is not reasonable. We contend that it was never intended by Congress that the Food Stamp Program be used as a media whereby, through its operation, food stores would be put out of business. Yet, in the instant case, a sixty-day disqualification period would create a financial burden on the store so as to seriously, and perhaps irretrievably, endanger its continued existence.

Exhibit A, attached hereto and incorporated herein, represents a typical forty-week period of business for J. C. B. Super Markets, Inc. That this store does an unusually large amount of food stamp business is evidenced by Exhibit A. Indeed, we are informed by the local Food Stamp Office that this store is one of the largest food stamp redemption stores in Erie County. It is the largest food stamp redemption store in the "COBS" Market chain, which, together with its "B-KWIK" Division, redeemed \$606,765.00 in food stamps during the year July 1, 1968 to June 30, 1969. This store is located in a predominantly low-income

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neighborhood and has a high ratio of food stamp customers. There is also a good deal of food store competition; therefore, there is no doubt that a loss of authorization to redeem food stamps would result in a loss of all of the food stamp customers during the period of disqualification, and probably forever. It is a fact of competitive business that once a customer is lost, it is almost impossible to recapture this customer.

We have requested Daniel Joseph and Company, the accountants and auditors for J. C. B. Super Markets, Inc., to establish the loss of sales and profit which will be suffered if this sixty-day disqualification were to stand. Their report, dated October 1, 1969, is attached hereto and incorporated herein as Exhibit B. The report shows an anticipated loss of sales of \$45,987.71 and a loss of profit of \$7,914.48. This loss will be in addition to a \$10,192.34 projected loss for the sixty-day period. These figures are staggering. As is stated in the report, these figures do not include cash sales of food stamp items to food stamp customers. Certainly, the loss of cash sales of eligible items to food stamp customers which, as previously stated, will surely be lost since these customers will shop elsewhere, will be a substantial figure. Furthermore, in the last few weeks, this store has experienced an increase in their sales volume. A loss of food stamp authorization now would certainly cause a greater detrimental impact than projected, based on last quarter-year figures.

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It is appropriate to point out that J. C. B. Super Markets, Inc. has accumulated losses of approximately \$92,600.00 to date. The projection in Exhibit B will substantially increase that figure.

Exhibit C, attached hereto and made a part hereof, is a quarterly financial and operating statement of J. C. B. Super Markets, Inc. Insolvency is capable of two definitions -- one is if the firm's liabilities are greater than its assets; another is if the firm cannot pay its debts when due. By the first definition, J. C. B. Super Markets, Inc. is certainly insolvent. If disqualification becomes effective, J. C. B. Super Markets, Inc. may not be able to pay its debts when they become due without additional working capital financing. If financing could not be obtained, then it is certainly possible that this store could go out of business. We are not dealing with a prosperous store which could absorb a sixty-day disqualification without a threat to its continued existence as a going entity.

A sixty-day disqualification is too severe and harsh a penalty for J. C. B. Super Markets, Inc. to suffer and, therefore, not reasonable as it affects this business.

Point 2.

J. C. B. Super Markets, Inc. is a franchised "TOPS" Supermarket. "TOPS" Markets are well known in the Western New York area as high-volume, low-price, high-quality supermarkets. As already stated, J. C. B. Super Markets, Inc. operates its "TOPS" Market in a predominantly low-income area, which has a high ratio of food stamp customers. We

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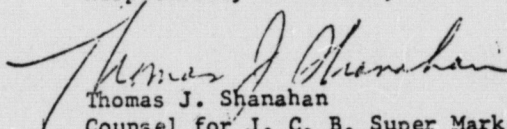
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submit that a disqualification from the Food Stamp Program would deal a direct blow to those people whom the program was designed to benefit. The prices and quality of food of the nearest large competitor to the "TOPS" Market are not as beneficial to the customer. The food stamp customers' dollar would not go as far for them if J. C. B. Super Market, Inc. is disqualified from the Food Stamp Program.

Conclusion

The financial plight of J. C. B. Super Markets, Inc., combined with the high volume of food stamp customers, makes it apparent that a sixty-day disqualification from the Food Stamp Program will deal an unusually severe blow to its business operations. This penalty is too severe, too harsh and unwarranted as a penalty for an unintentional violation of the Food Stamp Regulations. Likewise, a disqualification would have a direct, detrimental impact on the very people that the Food Stamp Act was designed to benefit.

Respectfully submitted,



Thomas J. Shanahan
Counsel for J. C. B. Super Markets, Inc.

TJS/ks
Atts.

Letter Dated May 6, 1970.

MAY 6 1970

CERTIFIED MAIL - Return Receipt Requested

Mr. Thomas J. Shanahan
C/O Niagara Frontier Services, Inc.
60 Dingess Street
Buffalo, New York 14203

Dear Mr. Shanahan:

Careful consideration has been given to the information you have furnished in support of your position that the J.C.B. Super Markets, Inc., d/b/a Tops Super Market, Buffalo, should not be disqualified from participation in the Food Stamp Program. I appreciate the opportunity of meeting with you and Mr. Joseph T. Perna in Buffalo. Senators Jacob K. Javits and Charles E. Goodell, as well as Congressman Henry P. Smith III, have also inquired as to this matter.

In determining whether this store was complying with Food Stamp Program requirements, ineligible non-food items were purchased with food coupons in each of three separate transactions. In all, 52 percent of the total items purchased were ineligible and included beer, a paring knife, light bulbs, and soap and paper products. A clerk participated in the first two transactions and Mr. John Cusack, the store manager, participated in the third transaction.

The administrative record reveals that Mr. Perna assumed ownership and operational responsibility of this store on March 30, 1968. Subsequent to this date, there were two visits to this store by Food Stamp Program personnel. These visits were for the purpose of assuring a complete understanding of the Food Stamp Program requirements and the need for strict compliance therewith. At the time of the store visit on October 23, 1968, the Program Representative observed a Food Stamp transaction in which Mr. John Cusack, sold ineligible non-food items for food coupons. As a result of this visit and observed violation, a warning letter was sent to Mr. Perna on December 2, 1968. This letter stated in part:

"This is an official warning from the U.S. Department of Agriculture that if you are again found to be in violation of the regulations you may lose your authorization to accept food coupons. Improper handling of food coupons could cause the Department to refuse payment on coupons improperly used or to bring criminal prosecutions for misuse of coupons."

21

Letter Dated May 6, 1970.

In spite of this December 1969 warning, rather serious program violations were found to be occurring with some frequency at this store in March 1970.

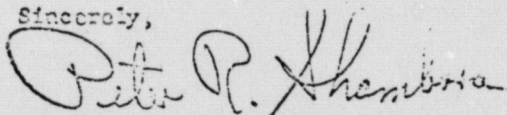
The record clearly demonstrates the need for firmly impressing upon all concerned with the operations of this store and other Tops Super Markets participating in this program, the necessity for a full understanding of the Food Stamp Program requirements and for diligently following these requirements. For the Food Stamp Program to achieve its purpose as provided by law, it is essential that the regulations governing the program be strictly adhered to and that Food Stamp coupons be accepted only for eligible food items. Program violations seriously impair the accomplishment of program objectives, increasing food consumption and improving the nutrition of needy families. A store's violations become known to an increasing circle of Food Stamp recipients, to other stores, and to a degree to the general public. This has a damaging impact on the image and performance of the program, especially if the violating store is permitted to continue uninterrupted participation in the program.

I have cited the above facts to again emphasize the seriousness of program violations and the importance of program compliance. From your letters and our meeting, I believe the management of Niagara Frontier Services, Inc., has become much more fully aware of this from experience in dealing with the now-known violations which occurred at the subject store. As a result, as you outlined in your letter of October 21, 1969, a number of important measures have been taken to more fully insure compliance with the Food Stamp Program requirements by those Tops Super Markets participating in the program. This we appreciate.

Because you have dealt so forthrightly with this matter and have adopted an aggressive program to further insure compliance by all your participating stores, I have determined that a period of disqualification of 30 days for Tops Super Market, 409 Niagara Street, Buffalo, rather than the 60 days originally determined, will adequately serve program needs at this time. In accordance with the law and regulations, this 30-day period of disqualification shall begin 15 days after your receipt of this letter. On or before the expiration of this period, Mr. Perna may reapply for participation in the program.

Your attention is called to Section 13 of the Food Stamp Act of 1964 and to Paragraph 1603.10 of the Regulations governing this program with respect to your right to judicial review of the determination herein stated. Please note that if judicial review is desired, the complaint to the court must be filed within 30 days of your receipt of this letter. Earlier action is desirable if you wish to seek a stay in the disqualification action pending its review of this matter.

Sincerely,



Peter R. Shanbora
Food Stamp Review Officer

Excerpts of Transcript of Testimony.

* * *

S. Goodman, for Government, Direct.

1 PROCEEDINGS: After short recess.

2 APPEARANCES: As before noted.

3

4 MR. BURNS: Your Honor, the Government's next
5 witness is Mr. Soloman Goodman.

6

7

8 S O L O M A N G O O D M A N (Apartment A-412, 6901 Old York
9 Road, Philadelphia, Pennsylvania), a Witness called by and in
10 behalf of the Defendant, having been first duly sworn, was
11 examined and testified as follows:

12

13 DIRECT EXAMINATION BY MR. BURNS:

14 Q. Mr. Goodman, will you state your occupation, please?

15 A. I am an investigator for Wolfe and Company working out of
16 Atlanta, Georgia.

17 Q. Were you formerly employed by the United States?

18 THE COURT: Is that Wolfe and Company?

19 THE WITNESS: Yes.

20 BY MR. BURNS:

21 Q. Were you formerly employed by the United States Department
22 of Agriculture?

23 A. Yes, I was.

24 Q. For what period of time?

25 A. April '66 to June of '72.

S. Goodman, for Government, Direct.

- 1 Q. And in what capacity were you so employed?
- 2 A. I was a special agent in the office of the Inspector
3 General.
- 4 Q. Now, what office did you work out of?
- 5 A. New York Regional Office.
- 6 Q. And what were the duties of a special agent?
- 7 A. To investigate, do investigations on the various programs
8 which are in the department.
- 9 Q. Do your responsibilities include anything to do with the
10 Food Stamp Program?
- 11 A. Yes. That is one of the programs that we had during the
12 period in question.
- 13 Q. Now, what are your duties, what do your duties specifical-
14 ly include in relation to the Food Stamp Program?
- 15 A. We use investigative aids to make purchases at various
16 stores upon the recommendation that comes to us for
17 investigations from the New York Regional Office of
18 Food and Nutrition Service.
- 19 Q. Now, did you have occasion or did you ever receive a
20 communication from , - requesting that you investigate
21 the J. C. B. Super Markets at 409 Niagara Street in
22 Buffalo?
- 23 A. Yes, I did.
- 24 Q. Would you relate the circumstances to the Court?
- 25 A. The request for an investigation came to the New York

S. Goodman, for Government, Direct.

1 Office and was assigned to me in March of 1969 to
2 investigate J. C. B. in Buffalo, New York, and I did
3 come here in March of '69 and conducted an investigation
4 on that store.

5 Q. Now; would you explain what your investigation consisted
6 of?

7 A. We use an investigative aide, generally two aides to make
8 purchases with Food Stamp coupons and they enter the
9 store and request both ineligible and eligible items in
10 the amount of approximately a dozen.

11 Q. Did you operate in this manner in the J. C. B. Super
12 Markets case?

13 A. Yes, I did.

14 Q. Did you work with an investigative aide in the Buffalo
15 area?

16 A. Yes.

17 Q. Do you recall her name?

18 A. Annie Crum.

19 Q. Now, would you explain what you did in the J. C. B.
20 Super Markets, at the J. C. B. Super Markets back in
21 March of '69?

22 A. On March 25, 1969 I gave Annie Crum a number of marked
23 Food Stamp coupons which she took to the store, first
24 leaving her handbag containing any possible cash or
25 coupons in my car.

S. Goodman, for Government, Direct.

1 MR. JAMES: I object to that answer, your Honor.
2 He doesn't know what it contained unless
3 he searched it.

4 THE COURT: Overruled.

5 BY MR. BURNS:

6 Q. Did you give Miss Crum any particular instructions prior
7 to her leaving your car and entering the store?

8 A. Yes, I did. I asked her to make approximately a purchase
9 of twelve items, approximately six ineligible and six
10 eligible items.

11 Q. And what do you mean by ineligible items?

12 A. Non-food items, basically.

13 Q. Did Miss Crum then enter the store at 409 Niagara
14 Street?

15 A. Yes, she did.

16 Q. She left her purse in your car, is that correct?

17 A. Yes.

18 Q. Do you recall approximately how long she was in the store?

19 A. Oh, thirty minutes.

20 Q. And then did she return to your company outside the
21 store?

22 A. Yes, she did.

23 Q. And what happened at that point in time?

24 A. We drove a few blocks from the store where she emptied
25 the shopping bag and each item that she purchased was

S. Goodman, for Government, Direct.

1 described on a statement by me.

2 Q. Now --

3 A. And --

4 Q. Mr. Goodman, I show you Government Exhibit 12 for
5 identification and ask you if you can identify that
6 document?

7 A. Yes, I can. This one indicates the purchase that was
8 made on March 25, 1969 and I filled it out.

9 Q. I call your attention to Page 2 of the exhibit. Does
10 your name appear on that page?

11 A. Yes, it does.

12 Q. How was this document, this piece of paper prepared?

13 A. This paper was prepared in my car within a few minutes
14 after the purchase.

15 Q. Now, whose writing appears on this form?

16 A. That's mine.

17 Q. Where does the information come from that you put on
18 this form?

19 A. It came from the investigative aide, Annie Crum, and the
20 items written, the items which were purchased were
21 listed there by me.

22 Q. Was this a document that you had prepared in your own
23 handwriting then?

24 A. Yes.

25 Q. Was this document prepared in the normal course of

S. Goodman, for Government, Direct.

1 business of the special agents duties?

2 A. Yes, it was.

3 Q. And is it the regular course of business for a special
4 agent to prepare these forms?

5 A. Right.

6 Q. Now, would you describe to the Court what information
7 is contained in this document?

8 A. Basic information indicates that on a certain date, in
9 this specific case March 25th, at about 1:00 p.m. --

10 MR. JAMES: Pardon me. I object to that, your
11 Honor. This document is not in evidence.

12 THE COURT: Are you going to offer this?

13 MR. BURNS: Your Honor, I will offer it but I am
14 just asking the witness to identify what
15 information is contained on that document.
16 I will have another witness. I will offer
17 it after presenting it to the other
18 witness.

19 THE COURT: Overruled.

20 MR. JAMES: Well, pardon me, your Honor. In this
21 case --

22 THE COURT: Do you want to ask him, Mr. James,
23 some questions about it?

24 MR. JAMES: Yes, your Honor, I do.

25 THE COURT: All right. You may ask.

S. Goodman, for Government, Preliminary.

1 PRELIMINARY EXAMINATION BY MR. JAMES:

2 BY MR. JAMES:

3 Q. Mr. Goodman, this document that you have that you are
4 referring to --

5 A. Yes.

6 Q. Is that signed by Annie Mae Crum?

7 A. Yes.

8 Q. And then you witnessed it, is that right?

9 A. Yes.

10 Q. All right. Now, when was that signed by Annie Mae Crum?

11 A. A few minutes after leaving Tops Market, or J. C. B.

12 She signs it as soon as I complete it. I complete it
13 with her help.

14 Q. All right, and after it was completed, did you add
15 anything to it?

16 A. No.

17 Q. You are sure?

18 A. Positive.

19 Q. Okay, and after that document was prepared in due course
20 was an affidavit prepared from that and signed by Annie Mae
21 Crum?

22 A. No. This is the only one we make.

23 Q. Do you know whether thereafter a document was prepared
24 in the form of an affidavit which was signed by Annie Mae
25 Crum which contained the same information that is

S. Goodman, for Government, Preliminary.

1 contained in that document?

2 A. Not to my knowledge.

3 Q. You know nothing of that?

4 A. No.

5 THE COURT: May I see that, please?

6 THE WITNESS: Yes, sir.

7 THE COURT: I am not going to permit this to
8 come in under the business records rule.
9 It is not something that would be kept in
10 the regular course of business. It is an
11 investigative report. What are you
12 interested in here? Do you want him to
13 tell what items Miss Crum delivered to
14 him when they got in the car?

15 MR. BURNS: That is correct, your Honor. I think,
16 your Honor, that this does qualify as a
17 memorandum of an act or occurrence or
18 transaction and Mr. Goodman has testified
19 in the regular course of business of the
20 special agents of the office of the
21 Inspector General that these are prepared.

22 THE COURT: I do not mean to be technical about
23 it but I will not admit it on that score.
24 The important thing, there is a lot of
25 information here about the description of

S. Goodman, for Government, Direct.

1 the checker and so forth. He wasn't in
2 the store and I am not going to permit
3 him to testify to that.

4 MR. BURNS:

Your Honor --

5 THE COURT:

6 If you want him, Mr. Burns, to testify
7 about what items Miss Crum delivered to
8 him, I will permit that and it would appear
9 to me that this was an accurate statement
10 accurately made at the time, Mr. Goodman,
11 I trust. I will permit him to use this
12 as an aid to his memory to tell us about
13 what items there were, but he cannot testify
14 about what Miss Crum did at the store.
15 We will have her here.

16 DIRECT EXAMINATION BY MR. BURNS: (Resumed)

17 Q. Yes, your Honor. Mr. Goodman, calling your attention
18 to Government's --

19 THE COURT:

20 Mr. James, I will sustain your
21 objection. I will not permit the document
22 to go in evidence but I will permit it to
23 be used as an aid to the witness'
24 recollection.

25 MR. JAMES:

Yes, sir.

BY MR. BURNS:

E. F. KNISLEY

OFFICIAL REPORTER, U. S. DISTRICT COURT

S. Goodman, for Government, Direct.

1 Q. Mr. Goodman, when Miss Crum returned to your car, did
2 she have in her possession a package?

3 A. Yes.

4 Q. And in that package what items were there?

5 A. A package of Tops paper towels, Tops paper napkins, a
6 package of Vim Detergent tablets, one cake of Dial Soap,
7 one plastic scoop, a six-pack of Pabst Beer, a can of
8 Morrell's Luncheon Meat, a can of Campbell's Soup, a bag
9 of apples, a bag of oranges and a package of rolls.

10 Q. Mr. Goodman, were some of these items non-food items?

11 A. Yes. The first six mentioned were ineligible items under
12 the Food Stamp Program.

13 Q. Now, did you see Miss or Mrs. Crum leave the store with
14 this package in her hand?

15 A. Yes, I did.

16 Q. Did she stop anywhere between leaving the store and
17 entering your car?

18 A. No, she did not.

19 Q. Mr. Goodman, did you have a subsequent occasion to visit
20 the store at 409 Niagara Street, J. C. B. Super Markets?

21 A. Yes, the following day.

22 Q. March 26, 1969?

23 A. Yes.

24 Q. And were you again in the company of Miss Crum?

25 A. Yes, I was.

E. F. KNISLEY

OFFICIAL REPORTER, U. S. DISTRICT COURT

S. Goodman, for Government, Direct.

1 Q. What was the purpose of your visit there on March 26?

2 A. Try to make another purchase.

3 Q. Did you give Miss Crum some instruction before she went
4 into the store?

5 A. / Yes, same instructions.

6 Q. Those instructions were --

7 A. Buy about a dozen items, make about half of them ineligible.

8 MR. JAMES: Pardon me, your Honor. I am going to
9 object to any testimony about this shopping
10 on March 26, 1969. I asked the Government
11 to furnish me in interrogatories with a
12 complete list of all the claimed violations
13 of the Food Stamp Program. In Paragraph 1
14 I said identify each transaction which
15 occurred at the store of the plaintiff
16 wherein defendant claims plaintiff violated
17 the terms and provisions of the regulations
18 and they said all cited violations are in-
19 corporated in the letter of charges to
20 plaintiff dated May 14, 1969, Exhibit "A",
21 and that letter of charges your Honor has
22 it in front of you is listed as Exhibit
23 "A" in the Government's answers to
24 interrogatories. It is a pretty thick
25 document with a lot of stuff in between it,

S. Goodman, for Government, Direct.

1 Judge.

2 THE COURT: Right.

3 MR. JAMES: Exhibit "A", which is the first
4 exhibit, that is a letter dated May 14, 1969.

5 THE COURT: To Mr. Cusack.

6 MR. JAMES: Yes, sir, and the three items they
7 list, the first is on or about March 25,
8 '69, Betty Gainer, Clerk, accepted \$6 in
9 Food Stamps in exchange for merchandise.
10 The acceptance was in violation. This
11 next one, they say on or about March 26,
12 '69, Betty Gainer, Clerk, accepted one
13 six-pack of Yacht Club Beer. There is
14 nothing that says that she can't accept
15 Yacht Club Beer and it doesn't say she
16 can't accept those other items in there,
17 as long as she gets the proper exchange
18 for them, I submit that that does not spell
19 out a violation on that day, and that is
20 their only complaint with respect to that
21 date.

22 THE COURT: They do not say anything, Mr. Burns.
23 They just say --

24 MR. BURNS: Your Honor, together with Exhibit "A"
25 attached thereto, there are exhibits "A1,

S. Goodman, for Government, Direct.

13

1 A2", and "A3". Exhibit "A2" is the
2 Government Exhibit 13 for identification.

3 THE COURT:

Which Mr. Goodman was just discussing.

4 MR. BURNS:

5 That is correct. Now, your Honor,
6 the letter of charges does state in that
7 second paragraph that the clerk accepted
8 the beer and accepted these items and I
submit, your Honor, that --

9 THE COURT:

10 Wait a minute. Let us take one thing
11 at a time. In Exhibit "A", the letter,
12 Mr. James refers to Paragraph 2, talking
about March 26.

13 MR. BURNS:

Yes, your Honor.

14 THE COURT:

15 Where it says that the clerk accepted
16 various items, a six-pack of Yacht Club
17 Beer and so forth. It just lists the
18 items. It says nothing about stamps or
19 cash. Now, "A1" is concerned with March
20 25th, the day before. Let us turn to "A2".
21 All right. It has to do with the events
22 of March 26th. The cost is \$5.59. I
23 handed over my coupon books. In other
24 words, what you are saying, Mr. Burns,
25 reading the answers to interrogatories as
a whole would indicate that the plaintiff

S. Goodman, for Government, Direct.

here was informed in the proper manner of the charge.

MR. BURNS:

That is correct, your Honor, and I think we can buttress this opinion by testimony of other witnesses.

THE COURT:

No. We are not talking about that. All we are talking about now is whether or not the plaintiff knew what charge he was facing.

MR. BURNS:

Yes, your Honor.

THE COURT:

Wouldn't this let you know, Mr. James, what the Government intended to do here?

MR. JAMES:

Well, except this, your Honor, I asked them in one, identify each transaction which occurred at the store wherein defendant claims plaintiff violated the terms and their answer, they say all cited violations are incorporated in the letter of charges, so I submit that letter of charges then becomes their bill of particulars of what we did wrong. That letter of charges under Item Number 2 on March 26, 1969 does not indicate that we did anything wrong on March 26, 1969.

THE COURT:

I overrule your objection. I believe

S. Goodman, for Government, Direct.

1 they have informed you sufficiently.

2 BY MR. BURNS:

3 Q. Now again, Mr. Goodman, would you explain what instruc-
4 tions you gave to Annie Crum on March 26, 1969?

5 A. I provided her with Food Stamps and told her to go into
6 the store and make a purchase of about a dozen items
7 with about half of them being ineligible.

8 Q. Did she leave her purse in your car again on this visit?

9 A. Yes, she did.

10 Q. Did you then observe her walking into the store of
11 J. C. B. Super Markets?

12 A. I did.

13 Q. Did you subsequently see her exit from the store?

14 A. Yes, I did.

15 Q. Now, did she have in her possession any packages?

16 A. She had a shopping bag.

17 Q. Did she then go directly to your car?

18 A. Yes.

19 Q. What did you do then?

20 A. We drove a short distance away where I then took the
21 items out of the shopping bag and listed them as I
22 completed the statement.

23 Q. I hand you Government Exhibit 13 for identification.
24 Was that document prepared in your car after Miss Crum's
25 visit to the super market on March 26?

S. Goodman, for Government, Direct.

1 A. Yes. It was prepared by me.

2 Q. Would you relate the circumstances of how the document
3 was prepared?

4 A. I completed this document in my car and itemized or
5 wrote down the items that were provided by Miss Crum.

6 Q. Is the printing contained on the document written in your
7 hand?

8 A. Yes, it is.

9 Q. And how did you get the information to actually put on
10 this document?

11 A. I got it from Miss Crum.

12 Q. Now, as far as the listing of the items at the bottom of
13 the first page and at the top of the second page, where
14 did you get the information to list these items?

15 A. From the purchase items that were in the bag. We usually
16 write the ineligible items first and then the remainder
17 are eligible.

18 Q. And what items are on that list?

19 A. One six-pack Yacht Club Beer, one box Dash Detergent,
20 one Imperial scraper made of metal, one cake of Dial
21 Soap, one box of moth balls, one package of shoe laces,
22 one package of Scot Toilet Tissue, one can of Campbell's
23 Soup, one package of Oscar Mayer Salami, one jar Gulden's
24 Mustard, one quart Tops Milk, box of Quaker cereal, one
25 loaf Dairy Rich Bread.

S. Goodman, for Government, Direct.

1 Q. How many items were in that package?

2 A. Thirteen.

3 Q. And of the thirteen, how many are non-food or ineligible
4 items?

5 A. Seven.

6 Q. Did you have a subsequent occasion to visit J. C. B.
7 Super Markets on Niagara Street?

8 A. The following day.

9 Q. What day would that be?

10 A. March 27, 1969.

11 Q. Would you describe how you came to, - oh, strike that.
12 Would you relate the circumstances of your visit to the
13 store on the subsequent day, March 27th?

14 A. I brought Miss Crum to the store again and provided her
15 with coupons and had her make the same type of purchase
16 and she had a different clerk, I believe, this day.

17 Q. Did you give her some particular instructions as to what
18 she should do when in the store?

19 A. Buy the usual number of items and make about half of
20 them ineligible.

21 Q. Now, did she come out of the store, - I am sorry. Before
22 she went in the store, did you take her purse from her?

23 A. Yes. She leaves the purse in the car and then she went
24 in the store carrying nothing but the food stamps I
25 provided her with and an ID card.

S. Goodman, for Government, Direct.

- 1 Q. What kind of ID card is this?
- 2 A. It is issued by the local County Welfare Board or whatever
- 3 they call it in Buffalo and indicates she is a Food Stamp
- 4 recipient. All Food Stamp recipients are supposed to
- 5 carry them when they make a purchase.
- 6 Q. Do you recall approximately how long she was in the
- 7 store?
- 8 A. Twenty, thirty minutes.
- 9 Q. Did she leave the store with a shopper's bag in her
- 10 hand?
- 11 A. Yes, she did.
- 12 Q. Were some items in that bag?
- 13 A. Yes.
- 14 Q. Did she go directly from the store to your car?
- 15 A. Yes.
- 16 Q. And what happened next?
- 17 A. We drove a block or two away where we itemized them and
- 18 I completed a statement similar to the first two.
- 19 Q. I show you Government Exhibit 14 for identification.
- 20 Can you identify that exhibit?
- 21 A. Yes. This is an exhibit of a statement prepared on
- 22 March 27, 1969 with Annie Crum as the investigative
- 23 aide.
- 24 Q. Who prepared the statement?
- 25 A. I prepared it.

S. Goodman, for Government, Direct.

1 Q. Is it your handwriting appearing on Pages 1 and 2 of the
2 document?

3 A. Yes, it does.

4 Q. Was this prepared immediately after Miss Crum entered
5 the car?

6 A. Within a few minutes.

7 Q. Could you relate what items were contained in Miss Crum's
8 shopping bag when she entered your car?

9 A. Yes. She purchased twelve items. One, a roll of Tops
10 paper towels, a paring knife, a cake of Palmolive Soap,
11 a GE light bulb, a box of Vim Detergent tablets, a Cadie
12 Dust Cloth, and then food items, a box of Salerno Saltines,
13 a package of rolls, a can of Campbell's Soup --

14 THE COURT: Mr. Goodman --

15 THE WITNESS: Yes.

16 THE COURT: Are you reading all the items or just
17 reading the ineligible items?

18 THE WITNESS: I am reading all the items. The
19 ineligible items are the first ones.

20 THE COURT: When you say "food items", they are
21 eligible?

22 THE WITNESS: They are eligible, yes. Basically,
23 that is the difference between eligible
24 and ineligible. At the time I think the
25 only food items that were ineligible were

S. Goodman, for Government, Direct.

1 imported items. A box of Cheerios, a
2 bottle of Hunt's Catsup, a bottle of
3 Home Orange Drink.

4 BY MR. BURNS:

5 Q. How many packages, - how many items were contained all
6 told in that package?

7 A. Twelve. In this instance Annie Crum also had selected
8 cigarettes which the checker who happened to be the
9 manager refused to sell her.

10 Q. Now, of the total twelve items that you have listed here,
11 how many were ineligible items?

12 A. Six.

13 Q. Pardon me?

14 A. Six.

15 Q. Now, did you have occasion to visit J. C. B. Super
16 Markets on some later dates?

17 A. Yes, I did.

18 Q. Would you describe what dates they were and what trans-
19 pired?

20 A. Offhand I can't tell you the dates because when the
21 aide attempts to make purchases and is unsuccessful,
22 we don't prepare a statement, and there were two other
23 occasions where Miss Crum was unsuccessful and one
24 occasion where I used a different aide and she was
25 unsuccessful.

S. Goodman, for Government, Direct.

1 Q. Do you recall how many other visits besides these first
2 three that you made?

3 A. A total of six; three others.

4 Q. There were three others, and were there any ineligible
5 / items purchased on the other three occasions?

6 A. No, sir.

7 THE COURT: Mr. Goodman, --

8 THE WITNESS: Yes, your Honor.

9 THE COURT: Were the three other visits all made
10 after the visits of the 26th, 27th and
11 28th of March?

12 THE WITNESS: Yes. We usually request the aides to
13 try different clerks. Now, in a store
14 such as this the --

15 MR. JAMES: Now, wait, wait. Pardon me. I don't
16 think this is responsive to any question.

17 THE COURT: There is no question, Mr. Goodman,
18 so let us wait.

19 THE WITNESS: All right.

20 BY MR. BURNS:

21 Q. Mr. Goodman, after your visits to the store, did you have
22 any occasion to speak to any of the store personnel?

23 A. Yes, I did.

24 Q. And did you make a report of the conversations you had
25 with the store personnel?

S. Goodman, for Government, Direct.

1 A. Yes.

2 Q. I show you Government Exhibit 15 for identification
3 consisting of four pages. Can you identify that document?

4 A. Yes. It is a case report written by me.

5 Q. What is the purpose of this case report?

6 A. It reports to the Food Nutrition Service the results of
7 our investigation.

8 Q. Was this report prepared by you?

9 A. Yes, it is.

10 Q. Is it prepared in the regular course of the business of
11 a special agent in the office of the Inspector General?

12 A. Yes.

13 Q. And was it the regular course of business to prepare these
14 reports after shoppings of stores such as J. C. B. Super
15 Markets?

16 A. Yes.

17 Q. Now, does this report contain within it another report
18 of conversations you had with the personnel, with store
19 personnel at J. C. B. Super Markets?

20 A. Yes, it does.

21 Q. Calling your attention to Page 3 of that exhibit, could
22 you relate what was told you by the store personnel?

23 MR. JAMES: I object to that, your Honor. This
24 document is not in evidence and further
25 than that, your Honor, in my interrogatories

S. Goodman, for Government, Direct.

1 I asked them to identify each transaction
2 which occurred and with respect to each
3 if reports relating to each such transaction
4 were made so indicate and attach copies
5 of same to your answers and they did not
6 attach a copy of this report. This is
7 brand new to me today.

8 THE COURT: Do you know anything about this,
9 Mr. Burns?

10 MR. BURNS: Yes, your Honor. The people I am
11 referring to in this report was indeed
12 furnished to the plaintiff and he does have
13 a copy of it.

14 THE COURT: Would you indicate to Mr. James where
15 and when it was furnished?

16 MR. BURNS: Yes, your Honor.

17 MR. JAMES: Apparently, your Honor, this is a
18 four-page report and the page he is talking
19 about which is one page of that, I have
20 seen that. I have not seen the report.

21 THE COURT: Are you just interested in the one
22 page?

23 MR. BURNS: Yes, your Honor, that is all I am
24 talking about.

25 THE COURT: Very well, continue.

S. Goodman, for Government, Direct.

1 BY MR. BURNS:

2 Q. Mr. Goodman, would you relate the substance of your
3 conversation with the store personnel and identify them?

4 A. Yes. I spoke to the manager, John Cusack at Tops
5 Market, 409 Niagara Street, Buffalo, who declined to
6 sign a statement but orally advised substantially as
7 follows: 27 years old, single, lives at 44 Magnolia Street,
8 Buffalo, New York. He has been the manager for about
9 a year and he feels he knows the Food Stamp regulations.
10 He seldom operates the cash registers but does give the
11 cashiers a few moments relief from time to time. His
12 total time on the registers would not exceed one hour
13 per week. He feels that if he permitted the sale of
14 ineligible for Food Stamps it was because he was careless
15 and he knows better. He was not aware that a recipient
16 was supposed to show the Welfare or Food Stamp identifica-
17 tion card or that the coupon book had to be signed. He
18 makes an attempt to educate the cashiers about the
19 Food Stamp Program every ten weeks because he has a very
20 heavy turnover in cashiers. All but one of his cashiers
21 are temporary. His market at present grosses about
22 four and a half million a year and about five per cent
23 of this business is in Food Stamps. He would like to
24 keep his store in the program and will do everything
25 possible to see that regulations are followed in the

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S. Goodman, for Government, Direct.

1 future. He feels that Betty Gainer, the clerk mentioned
2 in this report is one of his best clerks and is
3 surprised that she would sell beer and other ineligible
4 items for Food Stamps. My next interview --

5 MR. JAMES: Pardon me, your Honor. I am going to
6 object to that. This is an interview he
7 had with Betty Gainer, a cashier. I submit
8 that any testimony of hers is not binding
9 on J. C. B. Super Markets.

10 THE COURT: Is that what you want to offer,
11 Mr. Burns?

12 MR. BURNS: Well, your Honor, I want to offer this
13 report that Mr. Goodman made as evidence
14 of the fact that the, - certain individuals
15 did talk to Mr. Goodman and substantially
16 told him the things that are mentioned in
17 this exhibit. I am not prepared, if
18 Mr. James wants to argue at this point the
19 question of whether this may be imputed to
20 the defense, to J. C. B. Super Markets,
21 I think that is a different question.

22 MR. JAMES: I am arguing that, your Honor.

23 THE COURT: Please?

24 MR. JAMES: Any statements made by this --

25 THE COURT: She is an agent of the store.

S. Goodman, for Government, Direct.

1 MR. JAMES: Yes, your Honor, she is a cashier for
2 the purpose of selling, typing out on her
3 cash box what is coming through there.
4 She is not an agent to make any statements
5 or any admissions that would be binding
6 on this store.

7 MR. BURNS: Well, your Honor, I am not arguing
8 that this is binding, necessarily binding
9 on the store at this point in time. I
10 think it can be received in evidence.

11 THE COURT: Then why would we hear about it?

12 MR. BURNS: I think it can be received in
13 evidence. Are you objecting to Mrs.
14 Gainer or Mr. Cusack?

15 MR. JAMES: Mrs. Gainer.

16 MR. BURNS: I think we can take it. We haven't
17 started Mrs. Gainer yet.

18 MR. JAMES: He was the manager, Judge.

19 THE COURT: I think if you want Mrs. Gainer, you
20 better have her here to testify. I will
21 sustain the objection to Mrs. Gainer.
22 She is not a managing agent of the store.
23 She is not in a position of supervision.

24 MR. BURNS: Your Honor, I would submit that the

25 THE COURT: Whatever she said at the time of the

S. Goodman, for Government, Cross.

1 transaction is one thing, but not some
2 later statement made later on. You can
3 subpoena her and bring her in and I will
4 listen to her testimony.

5 MR. BURNS: Yes, your Honor. I think it would be
6 admissible in any event under the --

7 THE COURT: I sustain the objection.

8 BY MR. BURNS:

9 Q. What was done with this report of yours, Mr. Goodman,
10 Government Exhibit 15 for identification?

11 A. This report was referred to the New York Regional Office
12 of the Food and Nutrition Service.

13 MR. BURNS: I have no further questions of this
14 witness.

15 THE COURT: Mr. James.

16
17 CROSS EXAMINATION BY MR. JAMES:

18 Q. Can I see that report, please? .

19 A. Sure.

20 Q. I think you testified, sir, that you are presently with
21 Wolfe and Company?

22 A. Yes, I am.

23 Q. What is your job with them?

24 A. I am an investigator.

25 Q. And what is their business?

S. Goodman, for Government, Cross.

1 A. Well, they are an accounting and consulting firm. At
2 present I am working a contract that they have with the
3 Federal Government, HEW in Georgia.

4 Q. So you are still investigating for the Federal Government,
5 are you?

6 A. No, for Wolfe and Company.

7 Q. Now, I think that you said that you had two aides that
8 were available to shop this store, is that correct?

9 A. Yes. I used one other.

10 Q. Annie Mae Crum, - is that Miss or Mrs. Crum?

11 A. I think it was Miss at the time.

12 Q. She was one of your aides and who was the other?

13 A. Betty Morgan, Mrs.

14 Q. Pardon?

15 A. Mrs. Betty Morgan.

16 Q. Mrs. Betty Morgan?

17 A. Yes, sir.

18 Q. And did she shop this store also?

19 A. One time.

20 Q. And that was after these three violations?

21 A. Yes.

22 Q. That we are talking about here?

23 A. Yes.

24 Q. At the time she conducted that shopping, she found no
25 violations at the store, is that right?

S. Goodman, for Government, Cross.

- 1 A. True.
- 2 Q. Had you followed the same procedure with her that you
- 3 had followed with Miss Crum?
- 4 A. Yes.
- 5 Q. As far as telling her what to do, to go into the store
- 6 and try to purchase ineligibles as well as purchase
- 7 eligibles, is that right?
- 8 A. That's right.
- 9 Q. And she went in the store and then did she report to
- 10 you that she had tried to purchase ineligibles and also
- 11 eligibles?
- 12 A. Yes.
- 13 Q. And she told you that she had been unable to?
- 14 A. Right. She couldn't purchase ineligible items.
- 15 Q. All right. Now, did she report to whom she went in the
- 16 store to try to purchase these ineligible items?
- 17 A. Well, she would only relate that the person looked like
- 18 and it wasn't the same, the clerks of the prior thing.
- 19 Q. That is what?
- 20 A. It was not the same two clerks that were involved in the
- 21 statements that were written.
- 22 Q. I see, but you did not know the name of the clerk that
- 23 she did try?
- 24 A. No.
- 25 Q. Nor do you know whether it was the manager?

S. Goodman, for Government, Cross.

- 1 A. I know it wasn't the manager.
- 2 Q. And then Miss Crum also went in and tried to shop on
- 3 two separate occasions following these three and was
- 4 unsuccessful. Is that right?
- 5 A. Right.
- 6 Q. And does it indicate who she tried or what she tried to
- 7 do on those ~~to~~ later occasions when she went into J. C. B.
- 8 Super Markets?
- 9 A. She tried two different cashiers.
- 10 Q. And tried to do what with them?
- 11 A. Buy ineligibles and eligible items.
- 12 Q. That was what she did on both of those occasions?
- 13 A. Yes, and she bought eligible items and no ineligible
- 14 items were sold to her.
- 15 Q. And she was refused the ineligible items?
- 16 A. Right.
- 17 Q. When she tried to buy them?
- 18 A. Right.
- 19 Q. Do you have a report on those two shoppings?
- 20 A. No; when they are negative we don't make a report.
- 21 Q. Now, do you also have in this report of yours, indication
- 22 that on April 4, 1969 Miss Crum again had a transaction
- 23 with the clerk Betty Gainer?
- 24 A. She had one with Betty Gainer and --
- 25 Q. And what was that transaction?

S. Goodman, for Government, Cross.

- 1 A. She declined.
- 2 Q. What was the transaction?
- 3 A. What do you mean, what was it? It was a negative
- 4 transaction, meaning she couldn't purchase ineligible
- 5 items.
- 6 Q. Is that what you had instructed her to try and do on
- 7 that occasion?
- 8 A. I instructed her to buy both and she was refused
- 9 ineligible items.
- 10 Q. All right. On that fourth transaction --
- 11 A. Oh, you mean --
- 12 Q. Yes, that one on April 9th, what was that transaction?
- 13 A. Sorry. That transaction was the usual transaction.
- 14 After several ineligible and eligible transactions had
- 15 occurred, we attempted to sell Food Stamps for cash.
- 16 Q. I see. Those were the instructions that you had given
- 17 to Miss Crum to go and try and sell Food Stamps for
- 18 cash, is that right?
- 19 A. Right.
- 20 Q. And you went to who to try and do that?
- 21 A. She went to Betty Gainer.
- 22 Q. That was the same one who had sold her the previous
- 23 items, was it?
- 24 A. Right.
- 25 Q. All right, and then did you have another transaction

S. Goodman, for Government, Cross.

1 after that that you did make a notation of?

2 A. No more notations.

3 Q. All right.

4 A. A fifth attempt was with an unidentified clerk and a
5 sixth attempt was unidentified.

6 Q. Okay. Now, before Miss Crum went into the store on
7 these occasions, you say she left her purse with you,
8 is that right?

9 A. Right.

10 Q. Did you look into her purse while you had it?

11 A. No.

12 Q. You just kept it?

13 A. Right.

14 Q. Did you search her for money before she went in?

15 A. No.

16 Q. Did you ask her whether she had any other money before
17 she went in?

18 A. Yes.

19 Q. And what did she say?

20 A. She didn't have any.

21 Q. All right. Have you dealt with Miss Crum before this
22 on any occasions?

23 A. Many occasions.

24 Q. Over how long a period of time?

25 A. Two years, possibly, on occasion.

S. Goodman, for Government, Cross.

- 1 Q. And what would be the nature of the services that she
2 would perform for you during those two years time?
- 3 A. The same services. She would act as a shopper. She was
4 a shopper.
- 5 Q. Was she a full-time shopper?
- 6 A. No, just when we come to town on certain investigations.
- 7 Q. I see. Now, now did you happen to get her name?
- 8 A. Frankly, I don't remember. Maybe from your unemployment
9 office, something like that. We usually go to either
10 Welfare boards or whatever they call it in New York,
11 where you are unemployed and sign up for benefits, they
12 refer people.
- 13 Q. I see.
- 14 A. And we pay them on an hourly rate.
- 15 Q. And then you investigate those people to see whether you
16 think they are qualified to perform this job, do you?
- 17 A. Well, we have to determine whether we think they are
18 qualified by how they perform.
- 19 Q. I see. In other words, the first time you try them out
20 you don't know whether they are doing a good job or not?
- 21 A. That is true.
- 22 Q. And if they do all right, then you use them again, is
23 that the way?
- 24 A. Well, if they seem to understand what we are asking them
25 to do, yes. If not --

S. Goodman, for Government, Cross.

- 1 Q. Now, you say you pay them on an hourly basis?
- 2 A. Yes, we do.
- 3 Q. How much an hour?
- 4 A. At that time \$3.
- 5 Q. And do you pay the same regardless of the result that
- 6 they obtain?
- 7 A. Yes.
- 8 Q. Now, prior to the first shopping that occurred on
- 9 March 25, 1969, had you made any determinations yourself
- 10 as to who you were going to, - as to what cashier within
- 11 that store you were going to have Miss Crum try to
- 12 purchase from?
- 13 A. No.
- 14 Q. Do you know how it came about that she happened to hit
- 15 upon Miss Betty Gainer rather than some other clerk?
- 16 A. No.
- 17 Q. You have no idea?
- 18 A. Strictly happenstance.
- 19 Q. All right. Now, do you know or did you know Betty
- 20 Gainer's name ahead of time?
- 21 A. No.
- 22 Q. Do you know whether Miss Crum identified her at the
- 23 time she shopped her that first time?
- 24 A. Yes. Each statement indicates that.
- 25 Q. That she did identify her?

S. Goodman, for Government, Cross.

1 A. Not by name, but what they look like.

2 Q. What they look like, but not by name?

3 A. No.

4 Q. At the time that first shopping took place, did you know
5 Betty Gainer's name?

6 A. No.

7 Q. When did you first find out Betty Gainer's name?

8 A. Probably when I interviewed her. You have two, - of
course, I have to check if she received due bills and
10 I would have to check that from these original statements,
11 the due bill has the initial or clerk's number on it.

12 Q. Well, could you check that record and see whether any
13 due bill was given at the time of that first shopping,
14 please.

15 THE COURT: Mr. Burns, could you help us out
16 here?

17 MR. BURNS: Your Honor, we don't have copies of
18 the due bills.

19 BY MR. JAMES:

20 Q. This thing here on the 25th, I will ask you to look at
21 this shopping dated March 25, 1969 and ask you whether
22 any due bills were given by Betty Gainer as a result of
23 that shopping?

24 A. Yes.

25 Q. All right, and what would be on that due bill?

S. Goodman, for Government, Cross.

1 A. The amount that the recipient could come back in and
2 claim. In this case, nine cents.

3 Q. All right.

4 A. And also it would have the initial or the store clerk's
5 number. Some stores use numbers of the register and
6 some use a clerk's initial.

7 Q. But it wouldn't have the lady's name on it?

8 A. No.

9 Q. So that at that time just from getting that due bill
10 you didn't know Betty Gainer's name at that point?

11 A. No.

12 Q. And how was it that you first learned Betty Gainer's
13 name?

14 A. Well, I went in the store and I had a description of
15 her and I believe I talked to the manager first.

16 Q. Now, when did you do this?

17 A. Well, in the case, - that would be after the total
18 purchases, both ineligible and the ones that were
19 declined had been completed.

20 Q. You mean all three shoppings?

21 A. All six shopping visits had been completed.

22 Q. All six shoppings, and after that you would get Betty
23 Gainer's name?

24 A. I got it from probably the manager.

25 Q. All right. Now, sir, with reference to this defendant's

S. Goodman, for Government, Cross.

1 Exhibit 13 for identification, or, no, the one you have.

2 A. 12.

3 Q. Defendant's 12 for identification.

4 A. Yes.

5 Q. I think you told me that after Annie Mae Crum, - Annie M.
6 Crum signed this statement, you did not add anything,
7 is that right?

8 A. Those, no.

9 Q. Have these three exhibits, the shoppings of March 25,
10 March 26 and March 27, which are Government's Exhibits
11 12, 13 and 14, been changed in any way from the date
12 that Annie Mae Crum signed them?

13 A. Changed in what sense?

14 Q. Have they been changed in any way?

15 THE COURT: Anything added or any erasures?

16 THE WITNESS: I don't believe so.

17 BY MR. JAMES:

18 Q. All right. Now, I am going to ask you to look at this
19 same shopping document for March 25, 1969 that you have
20 and the one that --

21 A. March which?

22 Q. What?

23 A. March which?

24 Q. March 25, 1969.

25 A. All right.

S. Goodman, for Government, Cross.

- 1 Q. Which you have, and then I am going to ask you to look
2 at the March 25th document which is marked Exhibit "A1"
3 in the answers to my interrogatories and I ask you
4 whether if on mine in the answer to interrogatories the
5 name Betty Gainer, clerk, is not written in just above
6 the listing of the items that you have on there?
- 7 A. That is not my handwriting either.
- 8 Q. I say isn't that added in there on those answers to
9 interrogatories?
- 10 A. It is on yours.
- 11 Q. But it is not on yours?
- 12 A. No.
- 13 Q. Do you know where that handwriting came in on the
14 document in the answers to interrogatories when it is
15 not on the document that you have?
- 16 A. No.
- 17 Q. You have no idea?
- 18 A. No.
- 19 Q. And the answers to interrogatories, the documents that
20 I got are incorrect, is that right?
- 21 A. Well, I can't judge that. This is the original.
- 22 Q. Well, the documents that I have --
- 23 A. And somebody obviously identified the clerk on that, yes,
24 but I did not add that.
- 25 Q. Do you know who made that addition to those documents?

S. Goodman, for Government, Cross.

1 A. No. It wouldn't be anybody in our office.

2 Q. How do you know that?

3 A. They don't know anybody. I made the report. This is my
4 report and this is my report and nobody in our New York
5 Office would handle it. They wouldn't change that.

6 THE COURT: I believe we will take a recess now
7 until 2:00 o'clock and then continue.

8

9 (Luncheon recess taken.)

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S. Goodman, for Government, Cross.

1 PROCEEDINGS: After recess.

2 APPEARANCES: As before noted.

3
4 THE COURT: Mr. Goodman recalled.

5
6 SOLOMAN GOODMAN, a witness called by and in be-
7 half of the defendant, having been previously duly sworn,
8 resumed the witness stand and testified further as follows:

9
10 CROSS EXAMINATION BY MR. JAMES (Resumed):

11 Q Mr. Goodman, you have told us how you went about these
12 three shoppings on which you have submitted the three
13 reports and you have told us about three additional
14 shoppings that took place at a later date. Were you up
15 here when those three additional shoppings took place?

16 A Yes.

17 Q And did you stay up here in the meantime or were you
18 going back and forth in the meantime?

19 A No. I stayed here. We had additional cases at the same
20 time.

21 Q You were up here for what, about two or three weeks
22 during that period of time?

23 A I believe I was here two months.

24 Q Two months?

25 A Yes.

Q I see. At any time during that period of time, did you

S. Goodman, for Government, Cross.

- 1 identify the people who had been shopped, did you identify
2 the cashiers at the J.C.B. Super Market?
- 3 A No, only after the six attempts were made.
- 4 Q All right. Now, did you identify them?
- 5 A Yes.
- 6 Q And how did you go about doing it?
- 7 A Well, after talking to the manager who was one of the
8 subjects, I determined that the clerk who sold ineligibles
9 twice to Miss Crum was Betty Gainer.
- 10 Q Now, how did you determine that?
- 11 A I believe I would have done that through the identifica-
12 tion which is provided on each statement plus - -
- 13 Q On what statement?
- 14 A Well, each of the buys.
- 15 Q There is no information on them, is there?
- 16 A It identifies them by weight, height, that type of
17 thing.
- 18 Q And that is the way you identified them?
- 19 A Right.
- 20 Q Weight, height and age?
- 21 A Approximate age.
- 22 Q And do you recall what the age was for Betty Gainer?
- 23 A I would have to look at the statement.
- 24 Q Was it thirty-one in one statement and thirty-five in
25 another statement?

S. Goodman, for Government, Cross.

1 A. Well, they will vary.

2 Q. They will vary?

3 A. Yes.

4 Q. Even though the same shopper does it one day and then
5 the next day, is that right?

6 A. That's right, the weights vary, the sizes vary, the
7 age varies.

8 Q. All right. Now, when you went looking for Betty Gainer,
9 did you know whether you were looking for a white person
10 or a black person?

11 A. Black.

12 Q. All right. Who told you that?

13 A. Annie Crum.

14 Q. All right. Now, were there any other black cashiers
15 in the store on that occasion, or were there not?

16 A. I don't think so, when I was there.

17 Q. When you were there.

18 A. But there were only a couple at the time, I believe.

19 Q. Only a couple of black - -

20 A. Right. So I believe that would have put it on Betty
21 Gainer's premise.

22 Q. Well, do you know how many black cashiers there were on
23 the occasion when Miss Crum went through and did the
24 two shoppings with this person that you now say is Betty
25 Gainer?

S. Goodman, for Government, Cross.

- 1 A No.
- 2 Q You don't know whether there was one or more than one?
- 3 A No.
- 4 Q And you don't know, - well now, how long was it after
- 5 these three shoppings of March 25, 6 and 7 that you went
- 6 back to that store and then tried to identify this
- 7 cashier?
- 8 A Oh, probably a week.
- 9 Q Oh, you went back a week after?
- 10 A Probably.
- 11 Q You mean after the six had been conducted?
- 12 A After the six had been conducted there may have been a
- 13 day or two before we went in there.
- 14 Q Now, do you have your report that shows when the sixth
- 15 one was conducted?
- 16 A No.
- 17 Q Do you have that? Well, does this show that the sixth
- 18 attempt took place on April 9, 1969?
- 19 A Yes.
- 20 Q And you think it was maybe about a week after that
- 21 you went into the store to try and identify - -
- 22 A No. Well, it could have been up to that, April 9th
- 23 to 15th, that's possible.
- 24 Q Maybe between April 9th and April 15th, is that right?
- 25 A Yes. It would be probably very shortly after the last

S. Goodman, for Government, Cross.

1 one. It could be the next day. It could be within a
2 week, depending on what else we were doing.

3 Q And when you went into the store, did you take Miss
4 Crum with you when you were trying to identify who this
5 clerk was that made the sale?

6 A No.

7 Q You just did it by a description that you had?

8 A A description and probably that due bill had her initials
9 on it that was mentioned before we broke.

10 Q You say probably. I thought you just said the due bill
11 did not have her initials on it.

12 A No, I didn't say it didn't.

13 Q Do you know whether it did?

14 A No, but we usually determine who issued it, I believe they
15 show an initial and the register number.

16 Q All right.

17 A So you give the owner the time and he can tell you who
18 was on there.

19 Q All right. Do you have that due bill?

20 A I don't.

21 Q Does anyone?

22 A It is possible.

23 Q Where would it be if it is possible?

24 A New York Regional Office.

25 Q Is it here in court?

S. Goodman, for Government, Cross.

1 A No. I don't know, you better - -

2 Q It is going to be of no assistance to us today then,
3 is it, that due bill?

4 A I don't think so.

5 Q All right. At the time that this shopping, these
6 three shoppings were made by Miss Crum on March 25, 26 and
7 27, you say the merchandise that was purchased was turned
8 over to you.

9 A Yes.

10 Q And then what was done with that merchandise?

11 A Well, we list it on the statement and then we give it
12 away.

13 Q You give it away?

14 A Yes.

15 Q So none of that merchandise is present to produce here
16 in court, is it?

17 A No. We don't keep that kind. Only in felonies.

18 Q Now, in connection with those three shoppings that
19 were made, was a cash register tape obtained?

20 A In some instances, they are and they are kept.

21 Q All right.

22 A But they don't have anything on them but my signature
23 and the shopper's initials and the date in the case,
24 but it wouldn't give you a clue. It gives you a clue
25 as to the register.

S. Goodman, for Government, Cross.

- 1 Q As to the register?
- 2 A Right.
- 3 Q As to the register you mean which of the - -
- 4 A In the store.
- 5 Q You are going through.
- 6 A They each have a number on the tape.
- 7 Q So if you had those tapes here, you could then tell which
- 8 aisle Miss Crum went through on each of these occasions
- 9 when she did the shopping, could you not?
- 10 A Right, but I know from just reading these reports in a
- 11 few of the instances a tape was made up but it wasn't
- 12 included in the bag.
- 13 Q All right. Do you know whether or not shopping machine
- 14 tapes were in fact given in connection with these
- 15 purchases made by Miss Crum from Betty Gainer and
- 16 allegedly from Mr. Cusack?
- 17 A No. I think you would have to read the statement.
- 18 Q I say do you know whether cash register tapes were taken
- 19 in connection with those purchases?
- 20 A I don't know. I would have to get it from the statement.
- 21 Q What statement?
- 22 A The ones we have here. They are on there, usually if
- 23 they didn't get one I mentioned it. I may have mentioned
- 24 that they got a due bill or a register tape and change.
- 25 Q And if they did get a tape, then you wouldn't mention

S. Goodman, for Government, Cross.

1 it, is that th' way it works?

2 A I might or I might not. Usually, if they get one it
3 shows.

4 Q And if they did get one, it doesn't show?

5 A No, it might show. It might show that she returned to
6 me with the coupons.

7 Q Would you look those three statements over and say whether
8 to your knowledge cash register tapes were obtained on
9 these three shoppings?

10 A The first one shows fifty-nine cents change in the form
11 of a fifty cent coupon and nine cent due bill, which the
12 clerk threw in the bag, but when she returned to me, she
13 couldn't find the due bill. It wasn't in the bag so
14 that one shows no register tape.

15 Q That one shows that no register tape was obtained?

16 A There may have been one, but it doesn't show anything
17 as to not being or I will try another one here.

18 Q Wait, let's stick with the first one. So looking at
19 that first one you can't tell whether a cash register
20 tape was obtained or not, can you?

21 A No.

22 Q And since the due bill, if there was one issued by the
23 cashier was given to Miss Crum, but she couldn't find it
24 afterwards, you can't identify the cashier on the
25 basis of that due bill then, can you?

S. Goodman, for Government, Cross.

- 1 A No.
- 2 Q All right. Now, look at your second one and see whether
- 3 you have got any cash register tape on that one.
- 4 A She received 41 cents in change in the form of a due
- 5 bill. She did not ask for identification or check the
- 6 coupon book and on the next page they have what she gave
- 7 me. She gave me the due bill.
- 8 Q She gave you the due bill?
- 9 A Yes.
- 10 Q What about the cash register receipt?
- 11 A It doesn't say.
- 12 Q So you would assume from that, would you, that you got
- 13 a cash register tape?
- 14 A Yes.
- 15 Q All right. Now, where is that due bill? That is the
- 16 shopping of March - -
- 17 A It may have been - -
- 18 Q Wait, wait, wait. March 26, 1969.
- 19 A Yes.
- 20 Q Where is that due bill?
- 21 A That due bill may have remained in the office of the
- 22 officer of the inspector general in New York.
- 23 Q Do you have that due bill here in court?
- 24 A I don't.
- 25 Q And so you have no means of identifying who the cashier

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1 was who allegedly sold this merchandise to Miss Crum, do
2 you?

3 A. No.

4 Q. All right. Now, would you look at the third statement
5 there for March 27, '69.

6 A. I received a dollar sixty-three in change in the form of
7 three fifty cent coupons and a thirteen cent due bill.
8 She did not get a register tape.

9 Q. All right. Now, do you have that due bill here in court?

10 A. No.

11 Q. Do you know where it is.

12 A. Probably the same place the other one is.

13 Q. Do you know whether there was any identification on that
14 due bill?

15 A. No, I can't tell.

16 Q. You can't tell. Thank you. Now, did the U.S. Attorney
17 ask you to search your files for those due bills and to
18 bring them up to court today?

19 A. Not me.

20 Q. Well, to your knowledge did he ask anyone in your office?

21 A. I don't know.

22 Q. And your office would be the place where they were kept
23 if they were in existence, is that right?

24 A. Right.

25 Q. Now, did he ask you or to your knowledge anyone in your

S. Goodman, for Government, Cross.

1 office to bring in any cash register tapes that might
2 be in existence in connection with this matter?

3 A. Not that I know of.

4 Q. On any occasion during the time that Miss Drum was about
5 to make any of these three shoppings, did you instruct
6 her that one of the shoppings should be of Mr. Cusack,
7 the manager?

8 A. No.

9 Q. Do you know how it came about that she shopped Mr.
10 Cusack, the manager, rather than one of the other
11 cashiers in the store?

12 A. No, I don't.

13 Q. How did it happen that you didn't conduct the shoppings
14 yourself?

15 A. Well, the usual shopping is done by someone other than
16 the agent, especially if the agent doesn't necessarily
17 fit that store. Now, it is true I could maybe go in there
18 once, but the feeling was that most agents maybe look
19 like agents or something like that and they would wonder
20 what I was doing there with food stamps and be suspicious.
21 I am not sure they are right, but some areas I have
22 shopped myself, but mostly I didn't in this area.

23 Q. Well, you said you didn't think you looked like you
24 would fit the store. What do you mean by that?

25 A. Well, I would say I didn't look necessarily like a food

S. Goodman, for Government, Cross.

1 stamp recipient.

2 Q I see.

3 A I suppose you could look like one, but the office didn't
4 feel, at least at that time, that we would use agents
5 very often. There are areas that are ethnically suitable
6 and then they would say to the agent well, he could.
7 That was a matter for the supervisor to decide more often
8 than not. If you wanted to, you know, you could.

9 Q What was this general ethnic area where you were doing
10 these shoppings?

11 A Well, this was a low income white and black area.

12 Q I see. Were there Puerto Ricans there?

13 A I don't particularly remember whether there were.

14 Q Were Spaniards there?

15 A I can't tell you that.

16 Q Were blacks there?

17 A Yes.

18 Q I see. Now, had you ever been up in that area before
19 or have you ever been up there since?

20 A Only within that two month period that I was here.

21 Q I see. Okay. Now, I think you said that one of your
22 specific instructions to Miss Crum when she went to do
23 these shoppings was buy half the items that are eligible
24 and buy half the items if you can that are ineligible,
25 is that right?

S. Goodman, for Government, Cross.

1 A Roughly.

2 Q In other words, you were asking her to break the law with
3 respect to the use of food stamps and get someone else
4 to break it too, if she could, is that right?

5 MR. BURNS: Your Honor, I object to the way the
6 question is phrased.

7 THE COURT: There is no jury here. I will over-
8 rule the objection.

9 THE WITNESS: I was asking her to buy eligible and
10 ineligible items.

11 BY MR. JAMES:

12 Q All right, and get the cashier to break the law if she
13 could, is that right?

14 A If she would.

15 Q If she could. All right. I'm not trying to argue with
16 you. When you use these shoppers, do you tell the
17 shoppers to use their best efforts to get these cashiers
18 to sell these ineligible items to them?

19 A Absolutely not.

20 Q You don't.

21 A No.

22 Q You leave it up to them?

23 A Right.

24 Q One hundred per cent?

25 A Right.

S. Goodman, for Government, Cross.

- 1 Q Did you yourself keep any record of these shoppings
2 other than these documents that have already been marked
3 in evidence?
- 4 A No.
- 5 Q Did you keep any record of your investigation during which
6 you claim you determined who the cashiers were who had
7 made these sales?
- 8 A When you mean other record, such as what?
- 9 A Well, the record where you determined, perhaps, that
10 Betty Gainer was involved, did you make a record of
11 that?
- 12 A Just her statement.
- 13 Q Just what statement?
- 14 A That I took when I talked to her.
- 15 Q The statement from Betty Gainer?
- 16 A It is not a signed statement, it is a verbal statement
17 she gave, the same as the one for the manager.
- 18 Q And that is the only written record that you have kept
19 of the fact that the person who was shopped was Betty
20 Gainer?
- 21 A That and the manager.
- 22 Q That is the only written record, is that right?
- 23 A Right.
- 24 Q All right, and you are referring to Government Exhibit
25 15 for identification, and that is you are referring, are

S. Goodman, for Government, Cross.

1 you, down here where she says she cannot explain why she
2 sold ineligible items for food stamps?

3 A. Yes.

4 Q. That is what you are talking about?

5 A. Yes.

6 Q. Well, what did you do, did you go to Betty Gainer and
7 say "Betty, we caught you selling ineligible items for
8 food stamps, how about it", and you say that that accusa-
9 tion on your part constitutes the only record you have
10 that Betty Gainer was the one involved in these sales,
11 your statement to her?

12 A. Well, that's about all I could have. I can't think of
13 anything else. What other records are you interested
14 in?

15 Q. Well, is that the way it worked, you went up to Betty
16 Gainer and said "Betty, you are the one doing the sales,"
17 is that what happened?

18 A. I go up to her and I state we have an aide who shopped
19 her and these were the violations that were incurred
20 and let her explain it. That's all.

21 Q. All right. Now, do you recollect your discussions with
22 Betty Gainer?

23 A. Yes.

24 Q. Would you know Betty Gainer if she walked in this court-
25 room this afternoon?

S. Goodman, for Government, Cross.

1 A No.

2 Q Do you recall what was said and who said it?

3 A Well, that's about the substance of it right there.

4 Q The only reason you recollect anything about it is because
5 in 1969 you wrote this down, is that right?

6 A Right.

7 Q And anyplace in here does Betty Gainer independently
8 admit that she made those sales to Miss Crum or that those
9 sales were made in violation of any law?

10 A Well, I don't know whether you could consider whether
11 she admitted it. She couldn't explain why she sold
12 ineligible items for food stamps. She didn't deny it.

13 Q She didn't admit it either, did she?

14 A No. Well - -

15 Q You just accused her and then said explain it and
16 then she explained if she had why she did it, is that
17 it?

18 A Well - -

19 Q Isn't that about the substance of it?

20 A Well, not "if", explain why. She couldn't explain why.

21 Q Did you anyplace write down the name of Betty Gainer as
22 being the person from whom Miss Crum bought this
23 merchandise? You have to answer.

24 A I don't think so.

25 MR. JAMES: That is all I have.

E. J. KNISLEY

OFFICIAL REPORTER, U. S. DISTRICT COURT

S. Goodman, for Government, Re-direct.

- 1 THE COURT: Anything further, Mr. Burns?
2
3 REDIRECT EXAMINATION BY MR. BURNS:
4 Q Just a couple of questions, your Honor. Mr. Goodman,
5 / how much did you say that Annie Crum is paid for this
6 shopping job?
7 MR. JAMES: I object. This is repetitive, your
8 Honor.
9 THE COURT: Overruled.
10 THE WITNESS: \$3.00 an hour.
11 BY MR. BURNS:
12 Q Now, was there, - was she paid \$3 an hour regardless
13 of what items she may have returned to the car with?
14 A Yes.
15 Q Was there ever any financial incentive for her to return
16 with - -
17 A None.
18 THE COURT: You object. I sustain the objection.
19 MR. JAMES: Frankly, your Honor, I was about to.
20 THE COURT: That is a question for me.
21 MR. JAMES: I was going to ask the witness to
22 talk a little slower when it looked like
23 I want to object.
24 BY MR. BURNS:
25 Q Now, you said in reply to Mr. James that you asked Betty

S. Goodman, for Government, Re-direct.

1 Gainer some questions?

2 A Yes.

3 Q Do you recall or did she ever say that she had not sold
4 any of the items that you were enquiring of her?

5 A No.

6 Q That you were enquiring about?

7 A No.

8 Q Do you recall specifically mentioning the beer?

9 A I am sure I did.

10 MR. JAMES: Oh, I object to that, your Honor.

11 THE COURT: All right. Sustain the objection.

12 MR. BURNS: I have no further questions.

13 MR. JAMES: No more questions.

14 THE COURT: Thank you, Mr. Goodman. Next
15 witness, please.

16 MR. BURNS: The Government's next witness is
17 Annie Crum.

18
19 * * * * *

20

21

22

23

24

25

Excerpts of Transcript of Testimony.

1 that, who did you talk to". I thought
2 he was very vague. He never did come out
3 and indicate how he identified Betty
4 Gainer as being the person involved. As
5 far as we know, she didn't have a name tag
6 on her. They had a description. In one
7 of the descriptions Miss Crum said that
8 they identified this lady as being twenty-
9 one years old and another description they
10 identify her as being twenty-five years
11 old. I submit to you that there is
12 absolutely no proof that Betty Gainer was
13 involved in this transaction and therefore
14 I submit that two of those violations are
15 completely out of this case.

16 THE COURT:

17 Let me ask you this, Mr. James; what
18 if the Government came in and said "We
19 don't know the name of the person at all.
20 She was a young lady handling the cash
21 register and there were four checkout
22 spots and we just don't know her name but
23 she was working in the store and she
24 accepted these trading stamps in payment
25 for non-food items". Do they have to do
 it? Do they have to do anything more than

Excerpts of Transcript of Testimony.

1 that:

2 MR. JAMES: Yes, your Honor. In this case they
3 have to do more than that because the
4 whole basis of their charges is that
5 Betty Gainer who they identify or claim
6 to identify violated. That sets in progress
7 a whole series of events.

8 THE COURT: You come back to Gainer.

9 MR. JAMES: Yes, sir.

10 THE COURT: What if the Government said that
11 "We don't know who the clerk was, it was a
12 clerk", and she was in the store? What I
13 am saying to you or asking you, didn't
14 the Government by giving you the Gainer
15 name give you more than you were really
16 entitled to?

17 MR. JAMES: I don't think so, your Honor. In
18 any event, even if they did give us the
19 name, so at that point you focus on Betty
20 Gainer. "Now, Betty, did you do this
21 thing". You don't inquire around the
22 store. I think it is a matter of fair
23 play, really, as much as anything. Let's
24 assume they didn't have to give us the
25 name, the fact is they did give us the

Excerpts of Transcript of Testimony.

1 name. The fact is they pursued their
2 entire future course of action on the
3 assumption that it was Betty Gainer and
4 the manager that did this so then naturally
5 the only people we go to talk to are
6 Betty Gainer and the manager all the way
7 up.

8 THE COURT:

Isn't the difficulty we have here,
9 Mr. James, you and I deal all the time in
10 cases where we are bound by strict rules
11 of evidence, railroad injury and so forth
12 and so on.

13 MR. JAMES:

Yes, sir.

14 THE COURT:

Where a lot of times when we are out
15 in the street we make up our minds as to
16 what are facts. We take, let us say we
17 talk to the store manager or we talk to
18 other people, rely on their judgment, and
19 we say "All right. Now, our conclusion
20 is thus and so", and most of the time that
21 is a good way to get information and to
22 make a determination. We are held to a
23 higher level when we come into the usual
24 court case. In this case here we have
25 what is essentially an administrative

Excerpts of Transcript of Testimony.

1 proceeding, at least as far as the
2 Department of Agriculture is concerned,
3 and in dealing with stores, and they are
4 dealing with a lot of stores and a lot of
5 clerks and changing personnel, they are
6 trying to fairly enforce procedures under
7 the Food Stamp Program, so Mr. Goodman and
8 his buyer assistant go into the store and
9 they make purchases and it would appear
10 to them that this is clearly, well, we have
11 the food and the non-food items and she
12 gave the stamps and why should there be
13 any greater information required.

14 MR. JAMES:

 Well, that is why I started out my
15 argument, your Honor, with taking the
16 position that this is a penal statute in
17 some respects, the right to take away the
18 food stamps being a penal statute, if you
19 agree with me on that. This can take
20 away, as I will prove through the other
21 witness --

22 THE COURT:

 Of course, it would seem here that
23 the punishment meted out is much more
24 severe, it is true, than a lot of punish-
25 ments which I'm able to deal out in some

Excerpts of Transcript of Testimony.

1 criminal cases. Let us say an ICC
2 violation where you can only fine a firm
3 \$100 or something, but the trouble is
4 merely because the punishment is a severe
5 one does not mean that Congress has
6 decided that things should be decided in
7 a certain way and the Department of
8 Agriculture should have certain weapons
9 in their hand to enforce the program. It
10 does not make it penal just because they
11 are severe in nature.

12 MR. JAMES:

That is my first argument. The next
13 argument is this, it is a matter of
14 basic fairness that the Government, having
15 had at hand a very simple means of
16 establishing who these people were that
17 they claim violated, from the due bills
18 with the people's initials on them, from
19 the cash register certificates. All they
20 had to do was hang onto them and bring
21 them into court and then I couldn't be
22 making this argument today. They didn't
23 do that, plus which they then purport to
24 claim that they did find out who the
25 specific people were and then they focus

Excerpts of Transcript of Testimony.

1 our attention on those people that they
2 don't put any proof in to court and then
3 they say in their specifications Betty
4 Gainer did this and John Cusack did it
5 and they come into court and don't prove
6 it, although they had the means of proving
7 it and then claim at the time they knew
8 what the answer was, and just as a matter
9 of basic fairness I submit, especially in
10 view of the dire consequences to my client,
11 that they should have at least the burden
12 of establishing what they allege in their
13 initial letters to us, their letter of
14 charges, and I submit they have completely
15 failed to do that.

16 THE COURT:

17 We have had a lot of letters here,
18 a lot of written exhibits which I have not
19 had an opportunity to examine and the
20 testimony which must be filled in with
21 some of the written exhibits, so I will
22 withhold ruling upon your motion at this
23 time, Mr. James.

24 MR. JAMES:

25 All right, your Honor, and I would
like to make the same motion with respect
to John Cusack that I made with respect to

Excerpts of Transcript of Testimony.

1 Betty Gainer, that there is no proof.
2 THE COURT: All right.
3 MR. JAMES: And further, I move, your Honor, to
4 strike out the two charges against Betty
5 Gainer on the ground that it now appears
6 one hundred per cent clear that Betty
7 Gainer, if it was Betty Gainer, was acting
8 in direct violation of specific orders
9 given her by the management of J. C. B.
10 Super Markets, and I am quoting Miss Crum
11 when she said, quote, "She is not supposed
12 to let me have ineligible items but she
13 would let me have them". Now, that
14 certainly indicates that she had specific
15 instruction from management that she
16 should not do this, that she could not
17 do it, and nevertheless, she went ahead
18 and did it. Now, I submit to your Honor
19 that if this was something that she just
20 did carelessly, that is one thing. Then
21 you can say "All right, the store has not
22 properly supervised this girl, they haven't
23 properly instructed her and therefore in
24 some sense you can say 'All right, we are
25 going to hold the store responsible because

* * *

E. F. KNISLEY

OFFICIAL REPORTER, U. S. DISTRICT COURT

Excerpts of Transcript of Testimony.

1 Q. Now, did you talk to Miss, - did you talk to Betty
2 Gainer regarding these alleged violations?

3 A. We certainly did, yes.

4 Q. And did she make any admissions to you?

5 MR. JAMES: Pardon me, your Honor. I don't
6 think this is any fair part of the
7 Government's case here.

8 THE COURT: Overruled. That is your argument,
9 Mr. James. I think it is a fair question.
10 Overruled.

11 MR. JAMES: Yes, your Honor, but these are --

12 THE COURT: I will permit it.

13 THE WITNESS: Did Betty Gainer admit it to me?

14 BY MR. BURNS:

15 Q. Did she make any admissions to you regarding these
16 alleged violations?

17 A. Well, at first she was embarrassed and then she did.

18 Q. What did she say?

19 A. I can't recall how she said it.

20 Q. Can you recall what she said, the substance of what she
21 said?

22 A. She said she was sorry.

23 Q. Did she say what she was sorry about?

24 A. That she was sorry she got me in trouble is about the
25 way she put it. She is a very nice girl and I just

Excerpts of Transcript of Testimony.

1 couldn't see disciplining her any further. I just told
2 her that she did have us on the spot and in the future
3 she should realize the seriousness of what she did and
4 try to observe all the rules.

5 And did she say she appreciated the seriousness or what
6 was her reaction then?

7 A. She said "Yes, I know. I don't know why I did it".

8 Q. Did she imply then that she did do it?

9 A. She didn't imply that she didn't nor did she imply that
10 she did, but she --

11 Q. Did she deny it?

12 A. No, no, she didn't deny it. Betty Gainer is an honest
13 girl and that's why she is still with us. In fact, she
14 probably thought she was doing someone a big favor by
15 doing what she did and I am sure she knew it was against
16 our rules, she knew it was a violation.

17 Q. Did you talk to Mr. Cusack at all about these violations?

18 A. About her violations?

19 Q. About any of the three violations on March 25, March 26
20 and March 27.

21 A. Mr. Burns, we always talked about violations. We still
22 do.

23 Q. Well, after receiving information from the Department of
24 Agriculture, did you talk to Mr. Cusack specifically
25 about the charges that had been brought against him?

Excerpts of Transcript of Testimony.

1 A. In a fashion that would indicate that I was very
2 disturbed that we couldn't control the people better
3 than we did and I was very upset at the time and I
4 called meetings and I imagine I had a meeting every
5 single Tuesday, every single Tuesday evening for a long
6 period of time and then I moved it to once every month,
7 and people resented it.

8 Q. Getting back to my question, did Mr. Cusack immediately
9 after you were informed of these violations, did you
10 talk to Mr. Cusack about these specific instances?

11 A. Yes, I did.

12 Q. And what did he say?

13 A. He shook his head and couldn't imagine how it happened.

14 Q. Now, did you say anything to him about that he was
15 supposedly the individual who accepted food stamps on
16 the third instance for ineligible items?

17 MR. JAMES: Object to the form of the question,
18 your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: Would you please repeat that, Mr.
21 Burns?

22 THE COURT: In other words, this is March, -
23 what is it, March 29th?

24 MR. BURNS: March 27th.

25 THE COURT: March 27th. When the March 27th

Excerpts of Transcript of Testimony.

1 incident came to your attention, did you
2 talk to Mr. Cusack about it and if so,
3 what did he say to you about it?

4 THE WITNESS:

5 He just shook his head and said he
6 couldn't understand how it happened and
7 he never told me that he did, in fact,
8 do this, even though he probably believed
9 that he did because it was called to his
10 attention and it is not difficult to make
11 a mistake like that if you are not very
12 experienced.

13 BY MR. BURNS:

14 Q. And did he deny that he had committed the violation?

15 A. He did not deny it.

16 Q. Mr. Perna, you testified earlier about the profit and
17 loss statements that have been introduced as exhibits.
18 Do you recall what your profit or loss was for the year
19 1970 or rather, 1969? Do you have any profit and loss
20 statement for the year ending June of '69?

21 A. It is not a year, it is a quarter. Oh, wait a minute.

22 Q. You are referring to Government or Plaintiff's Exhibit 6,
23 is that correct?

24 A. 6, yes. This is a three-month statement, a six-month
25 statement here. Here is the year and the date, and
six months here, based on the volume. It is nine

* * *

Excerpts of Transcript of Testimony.

- 1 A. Right. The first time I heard about this Mr. Cusack
2 had approached me and said that he was told that he had
3 sold ineligible items for food stamps.
- 4 Q Did he say who told him that?
- 5 A I don't recall.
- 6 Q All right, and is that what you meant by getting nailed?
- 7 A That's what I meant, yes, sir.
- 8 Q Did he tell you that he had in fact sold ineligible
9 items?
- 10 A He said that if he was told, if they said he did, he
11 probably assumed that he probably did.
- 12 Q So he didn't know one way or the other?
- 13 A No, because I don't think he did it intentionally.
- 14 Q All right. Was Mr. Cusack a seminarian at one point?
- 15 A Yes, he was.
- 16 Q All right. Now, Betty Gainer, do you know her personally?
- 17 A I do now. She is still with me.
- 18 Q I see, and do you know the training that she received
19 when she came to your store?
- 20 A When she started she got the routine training, the same
21 training we give everyone else.
- 22 Q And what is that training?
- 23 A They work with an experienced cashier for twenty hours
24 on the register. Then they are, - after that period
25 they are interviewed and questioned on their knowledge

1 of their particular job.

2 Q All right, and are they, - would you state whether they
3 are questioned with respect to the food stamp operations?

4 A That is primarily the questions that we work on. The
5 food stamp program has caused us to spend at least twice
6 as much time in training people.

7 Q Now, why is that?

8 A It's not a very easy thing, Mr. James, to get a very, a
9 totally inexperienced person and take them and expose
10 them to a very new situation and have them check out any
11 number of the eight thousand or so items that we carry
12 and to distinguish those that are acceptable or unaccep-
13 table for food stamps, and also which are taxable, which
14 are not taxable, which are produce and various other
15 departmental objects or products. This, and then they
16 have to, - then there is another one, entering on their
17 daily report; they have to enter it on their daily
18 report and it is another item that you can enter dollars
19 on your daily report and then there is coupons so they
20 have to get into those and they have a new one now,
21 or the additional one of food stamps and food stamps are
22 not easy to count. You can't count them as easily as you
23 can money. They stick together and they are very hard, -
24 it takes five times as long to count food stamps as it
25 does to count money, so it does require a lot more time

* * *

E. F. KNISLEY
OFFICIAL REPORTER, U. S. DISTRICT COURT

Excerpts of Transcript of Testimony.

- 1 included in their responsibilities are supervising the
2 checkout personnel, is that a fair statement?
- 3 A. No.
- 4 Q. All right. Well, go ahead, you explain the situation.
- 5 A. When we are busy the reason for having someone up front
6 in a supervisory capacity for the checkouts is to keep
7 people moving faster in order to avoid long lines behind
8 the checkouts, to provide service for the people so they
9 can get checked out and go on about their business.
10 While they are doing this they try to observe what the
11 cashiers are doing. With eight, - if there should be
12 eight cashiers or nine cashiers on duty and working, we
13 could hardly have anyone observing all of them at one
14 time or at all times. We do depend on their training.
- 15 Q. When you hire someone to work at the checkout counter,
16 who will actually provide the training for that person?
17 Who will tell her how to operate the machines, what
18 procedures to follow and so on?
- 19 A. The store manager would probably make the schedule,
20 along with the head cashier.
- 21 Q. But do these personnel, - can these personnel come to
22 the cashier or the store manager or the assistant
23 manager for some assistance?
- 24 A. Yes.
- 25 Q. Now, are these, all these personnel, manager, assistant

Excerpts of Transcript of Testimony.

1 managers and head cashiers trained in Food Stamp
2 procedures?

3 A. Yes, they are.

4 Q. And who trains them?

5 A. Well, it's, - by the time they reach the point where they
6 do have this responsibility, they have probably trained
7 themselves and then we check to see that they do know
8 it thoroughly.

9 Q. How do they go about training themselves?

10 A. Well, if they start out as a stock boy, it is unnecessary
11 for us to train them on the Food Stamp Program, so in
12 their observations, in their observations while they
13 are working there and from word of mouth and conversation
14 in the coffee area, they do get pretty rounded knowledge
15 and by the time they become assistant managers, all we
16 do is check to see if they do know it thoroughly and
17 if they do, we just let it go at that, and I am confident
18 that they do know it thoroughly. by the time they get
19 to be assistant managers.

20 Q. Now, Mr. James asked you some questions about how you
21 might go about implementing a suspension from the Food
22 Stamp Program and you stated it would be difficult, -
23 correct me if I am wrong, but it would be difficult for
24 you to see that there is anyway that you could tell
25 these people that you have a food stamp suspension, that

* * *

E. F. KNISLEY

OFFICIAL REPORTER, U. S. DISTRICT COURT

Excerpts of Transcript of Testimony.

1 BY MR. JAMES:

2 Q Sir, have you had experiences in your store with people
3 who come up to your cashier without disclosing that they
4 intend to make purchases with food stamps and with large
5 carts and then let the cashier ring it all up and then
6 produce the food stamps and you find that they have a
7 lot of ineligible items along with the eligible items?

8 A Very common, Mr. James.

9 Q And what happens in that circumstance based on your
10 experience?

11 A If the customer doesn't walk out and leave us hanging
12 with all the merchandise that has already been shopped
13 off the shelves, then we will write up a credit slip and
14 rering the order all over again and separate it.

15 Q Do you have occasion when the customer who walks up
16 with his cart full of groceries when he finds he cannot
17 make a complete purchase with food stamps then walks out
18 of the store leaving all of the merchandise in the carts?

19 A Many, many times.

20 Q All right, and then what does your organization have to
21 do with that merchandise?

22 A Place it back on the shelves.

23 Q And how do you go about doing that?

24 A That is a big job. It takes an awful long time. It
25 takes much, much longer to put it back than to take it off.

Excerpts of Transcript of Testimony.

1 Q And you employ one of your clerks to take that merchandise
2 and put it back on the shelves?

3 A Often we will take and appoint three or four clerks to
4 do it.

5 Q All right. And what do you pay those clerks per hour?

6 A Our average pay is \$2.67 an hour right now.

7 Q All right. Miss Crum testified that when she picked that
8 merchandise up it takes about twenty minutes to pick it
9 up. What would you estimate that it would take you to
10 return, say the volume of merchandise that she picked up?

11 A Depending on who put it back, who would be putting it
12 back, a more experienced person could get it back much
13 quicker. A more experienced person also would be more
14 expensive. It would have to take twice as long to put
15 it back. I recall her statement that it would take just
16 as long to put it back, but - -

17 MR. BURNS: Your Honor, I also object to this.

18 I don't think Mr. James has established
19 a basis for this testimony.

20 MR. JAMES: I have to do it a little at a time,
21 your Honor. I am trying.

22 THE COURT: I think that is speculation. If
23 you take an experienced shopper, they
24 can find the items pretty quickly, but if
25 you take an inexperienced shopper in the
super market, they can hunt for hours.

Excerpts of Transcript of Testimony.

1 You know, you say get Wheaties and you go
2 down and there is a shole stand of
3 Wheaties. The clerk would know exactly
4 where the Wheaties box is but with all the
5 colors and the prints and all the rest of
6 it, it might take a shopper ten minutes
7 to find the Wheaties box, the inexperi-
8 enced shopper.

9 THE WITNESS: Your Honor, may I add something. Our
10 clerks, as you have mentioned, the stock-
11 boy that stocks the product could easily
12 find it, but the cashiers are not experi-
13 enced in this.

14 THE COURT: We get the point.

15 BY MR. JAMES:

16 Q Yes, sir. Now, when the customer brings up this cartload
17 of merchandise, is that segregated by department or is
18 it segregated by counter or is it all mixed in together?

19 A It is all mixed in together.

20 Q So that when the stockboy whoever it is takes that cart
21 and wheels it back in, he can't just say "Well, I got all
22 these items here, I put them here"; how does he go about
23 doing that?

24 A It is a frustrating disaster.

25 Q Well, explain it. Go into it a little bit.

* * *

Excerpts of Transcript of Testimony.

1 I refresh in my own memory, refresh my own memory on it
2 and we review the entire program.

3 Q Now, did you have literature that had been sent to you
4 from time to time by the Department of Agriculture?

5 A I had some literature.

6 Q Can you state whether, - the kind of person that Mr.
7 Cusack is as far as his character and personality is
8 concerned?

9 A Well, I might be, - it might be a prejudiced statement.
10 I happen to love the guy. He was an excellent employee,
11 very honorable and the only reason, - the only reason
12 I think that he got nailed with selling product for food
13 stamps that was ineligible is his enthusiasm and eager-
14 ness and loyalty to the company in trying to get people
15 moving out of the store in a hurry. If the lines back
16 up, we try to give better service. We put everything at
17 our disposal to get the people moving.

18 Q When you say he got nailed, you mean that Mr. Goodman
19 came to him on one occasion and said "You did something"?

20 A Yes.

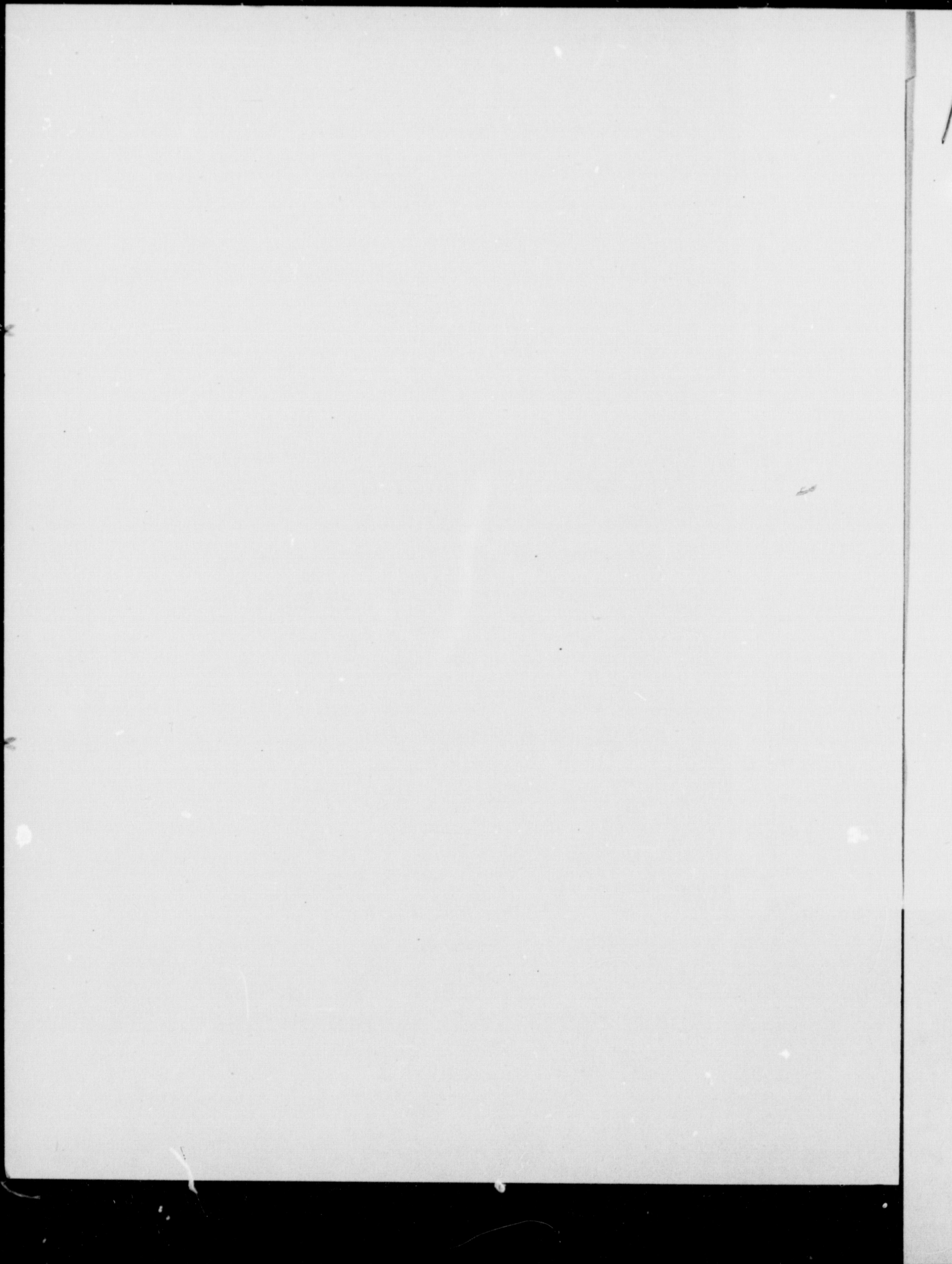
21 MR. BURNS: Your Honor, I object. It is putting
22 words in the witness's mouth.

23 THE COURT: Sustained.

24 BY MR. JAMES:

25 Q Would you state what you mean by getting nailed?

* * *



AFFIDAVIT OF SERVICE BY MAIL

State of New York) RE: J. C. B. Super Markets, Inc.
County of Genesee) ss.: U.S.A. & U. S. Dept. of Agriculture
City of Batavia) Docket No. 75-6063

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 31 day of October, 19 75
I mailed 2 copies of a printed Brief in
the above case, in a sealed, postpaid wrapper, to:

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at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Theodore J. Burns, Assistant U. S. Attorney,
502 U. S. Courthouse, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

31 day of October, 19 75

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1977